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NO. _____

IN THE SUPREME COURT

of the

UNITED STATES

October Term 1983

THE MUCKLESHOOT INDIAN TRIBE; AGATHA JERRY STARR; DONALD JERRY; LAWRENCE JERRY; BERT MOSES; HERMAN MOSES; CECIL MOSES; and HOWARD MOSES,
Respondents,

v.

TRANS-CANADA ENTERPRISES, LTD.; SYNERGY INTERNATIONAL, LTD.; and HERBERT GUENTHER, *Petitioners.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED

The question presented is whether or not historical tribal dependence upon fishing overcomes the presumption against the conveyance by the United States to the tribe of beds of navigable waters within an Indian reservation.

TABLE OF CONTENTS

	Page
Opinions Below	1
Jurisdiction	1
Statutory Provisions Involved	1
Statement of the Case	2
Reasons Why Writ Should Be Issued	5
A. This Court Did Not Determine That Historical Tribal Dependence Upon Fishing Overcomes The Presumption Against The Conveyance By The United States To The Tribe Of Beds Of Navigable Waters Within An Indian Reservation	5
Montana v. United States	5
Rulings by Courts of Appeal	8
Rulings by Ninth Circuit	8
Ruling by Seventh Circuit	11
B. This Court Should Determine That Historical Tribal Dependence Upon Fishing Does Not Overcome The Presumption	12
Conclusion	15
Appendices	
A. Opinion of Court of Appeals - *Muckleshoot Indian Tribe v. Trans-Canada Enterprises*	A-1

Table of Contents (continued)

Page

B. Opinion of Court of Appeals — *Puyallup Indian Tribe v. Port of Tacoma* A-1

C. Treaty of Medicine Creek A-26

D. Treaty of Point Elliott A-33

E. Executive Order, April 9, 1874 ..... A-43

F. Map A-44

TABLE OF AUTHORITIES

Table of Cases

Page

Alaska Pacific Fisheries v. United States,
248 U.S. 78 (1918) 14-15

Cherokee Nation v. Muskogee City-County Port Authority,
555 F. Supp. 1015 (1983) 8

Choctaw Nation v. Oklahoma,
397 U.S. 620 (1970) 7, 8, 11

Confederated Salish and Kootenai Tribes v. Namen,
665 F.2d 951 (9th Cir. 1982),
cert. denied, 103 S. Ct. 314 (1982) 8, 9, 10

Montana v. United States,
450 U.S. 544 (1981) ..... 4, 5, 6-7, 8, passim

Montana Power Company v. Rochester,
127 F.2d 189 (1942) 9

Muckleshoot Indian Tribe v. Trans-Canada Enterprises,
713 F.2d 455 (9th Cir. 1983) 5, 8, 11

Nelson v. DeLong,
213 Minn. 425, 7 N.W.2d 342 (1942) 13

Pollard's Lessee v. Hagan,
3 How 212, 11 L. Ed. 565 6

Puyallup Indian Tribe v. Port of Tacoma,
___ F.2d ___ (9th Cir. 1983) 1, 5, 8, 11

Puyallup Tribe v. Washington Game Department,
433 U.S. 165 (1977) 12

State of Wisconsin v. Baker,
698 F.2d 1323 (7th Cir. 1983) 11

United States v. Aranson,
696 F.2d 654 (9th. Cir. 1983) 9, 10, 11

Table of Authorities (continued)

Page

United States v. Holt State Bank.
270 U.S. 49 (1926) 7

United States v. Washington,
694 F.2d 188 (9th Cir. 1982) 8, 10

Wilbour v. Gallagher,
77 Wn.2d 306, 462 P.2d 232 (1969) 13

Witcher v. State,
87 N.H. 405, 181 A. 549 (1935) 13

Statutes

10 Stat. 1132 (December 26, 1854) 1, 2

12 Stat. 927 (January 22, 1855) 1, 2

Executive Order, April 9, 1874 ..... 1-2, 3, 7

28 U.S.C. § 1254 (1) 1

28 U.S.C. § 1291 5

28 U.S.C. § 1362 5

Other Authorities

1A *Thompson on Real Property,*
§ 26, pp 320-321 ..... 13, 14

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Trans-Canada Enterprises, Ltd. and Herbert Guenther respectfully petition this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the Ninth Circuit Court of Appeals was issued on August 15, 1983 and is reported at 713 F.2d 455. (Appendix A). The companion case of *Puyallup Indian Tribe v. Port of Tacoma* was also decided by the Ninth Circuit on August 15, 1983, but is not yet reported. (Appendix B).

JURISDICTION

The Ninth Circuit's opinion was issued of August 15, 1983. This petition was timely filed within 90 days of that date. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254 (1).

STATUTORY PROVISIONS INVOLVED

10 Stat. 1132 (December 26, 1854), Treaty of Medicine Creek (Appendix C).

12 Stat. 927 (January 22, 1855), Treaty of Point Elliott (Appendix D).

Executive Order, April 9, 1874

Muckleshoot Reserve.

[In Tulalip Agency, area, 5, square miles.] (For Executive orders of January 19 and 20, 1857, relative to Muckleshoot Reserve, see "Nisqually Reserve," below.)

EXECUTIVE MANSION, *April 9, 1874*

It is hereby ordered that the following tracts of land in

Washington Territory, viz: Sections 2 and 12 of township 20 north, range 5 east, and sections 20, 28 and 34, of township 21 north, range 5 east, Willamette meridian, be withdrawn from sale or other disposition, and set apart as the Muckleshoot Indian Reservation, for the exclusive use of the Indians in that locality, the same being supplemental to the action of the Department approved by the President January 20, 1857.

U.S. GRANT

STATEMENT OF THE CASE

The Muckleshoot Indian Tribe is composed of descendants of Indians who lived in villages along the White, Green, Upper Puyallup, Black and Duwamish Rivers and their tributaries during the mid-1800's in what is now western Washington State. The rivers and streams along which they lived were the focal point of their economy, culture and religion. They were dependent on these watercourses for food, materials, self-identification, language and religious practices.

Isaac Stephens was instructed on behalf of the United States government to induce these Indians to move voluntarily onto reservations. Treaties were concluded with the ancestors of the Muckleshoot Indian Tribe. They were parties to the Treaty of Medicine Creek, 10 Stat. 1132, concluded on December 26, 1854 and the Treaty of Point Elliott, 12 Stat. 927, concluded on January 22, 1855, which ceded the land in western Washington Territory to the United States and set aside certain specifically described reservations. (Appendices C and D).

The Treaty of Medicine Creek and the Treaty of Point Elliott also secured to the Indians in Articles III and V, respectively, the following: "The right of taking fish, at all usual and accustomed grounds and stations . . ."

This right to take fish included fishing outside of and within the reservations.

The lands in dispute, specifically the bed of the White River, were not included in the original reservations. The treaties provided that the President of the United States could, in the interest of Washington Territory and the welfare of the Indians, select additional land for reservations. In 1856 Isaac Stephens promised to make changes in the boundaries of the reservations designated in the treaties and provide a

new reservation on land along the White and Green Rivers.

In 1874 President Grant signed an Executive Order setting apart five alternate sections of land through which the White River flowed as an enlargement to the Muckleshoot reservation. The enlargement was a direct result of the United State's government's concern that the Muckleshoot Indians be provided a traditional fishery within their reservation boundary.

The entire Executive Order is set forth as follows:

Muckleshoot Reserve

Executive Mansion, April 9, 1874

> It is hereby ordered that the following tracts of land in Washington Territory, viz: Sections 2 and 12 of township 20 north, range 5 east, and sections 20, 28 and 34, of township 21 north, range 5 east, Willamette meridian, be withdrawn from sale or other disposition, and set apart as the Muckleshoot Indian Reservation, for the exclusive use of the Indians in that locality, the same being supplemental to the action of the Department approved by the President January 20, 1857.
>
> U.S. GRANT

(Appendix E)

Washington became a state in 1889.

At the time of the Executive Order two channels of the White River flowed through Section 28 of the reservation as enlarged by that Executive Order.

Patents which conveyed Allotments riparian to the southern channel to individual Indian families included that bed and land on either bank in the acreage assigned to the Allotments. The southern channel stopped carrying water on a perennial basis by 1915 and has been completely dry for at least the past fifty-five years.

The bed of the northern channel was not included in any Allotments of lands riparian to it. That channel has moved further to the north since 1874.

The Muckleshoot Indian Tribe filed its complaint on December 16, 1977 in the United States District Court for the Western District of Washington at Seattle to eject the petitioners from the former beds of both the southern and northern channels of the White River and the land between the former and present northern channel of that river. The petitioners are the successors in interest of the Allottees of the Allotments which had included the bed of the southern channel and which were bordered by the northern channel.

The Muckleshoot Indian Tribe and the petitioners stipulated that the northern channel was navigable in 1874 and the district court found at trial that the southern channel had also been navigable.

The district court concluded that the United States had conveyed title to the beds of the White River within the reservation as enlarged by the Executive Order to the ancestors of the Muckleshoot Indian Tribe.

The district court also concluded that the bed of the southern channel was included in the Allotments solely on the basis of surveyors' erroneous judgments that it was not navigable, and the United States through those Allotments had not divested the ancestors of the Muckleshoot Indian Tribe of title to that bed.

The district court also concluded that the reasons that the southern channel had become dry and the northern channel had moved to the north were major floods, landslides and human interference that were avulsive in nature.

Based upon these conclusions the district court ejected the petitioners from the former beds of the river and the land between the former and present northern channel. The district court's judgment was entered on March 12, 1981.

That judgment was vacated by the Ninth Circuit Court of Appeals and remanded to the district court to consider any further evidence and points and authorities it deemed appropriate in light of *Montana v United States,* 450 U.S. 544 (1981). The *Montana* case was decided after the entry of the district court's judgment.

On remand the parties did not present and the district court did not consider any additional evidence.

On July 9, 1982 the district court reinstated its original judgment.

On August 15, 1983 the Ninth Circuit Court of Appeals affirmed the district court's judgment. *Muckleshoot Indian Tribe v. Trans-Canada Enterprises,* 713 F.2d 455 (9th Cir. 1983) (Appendix A). The decision of the Ninth Circuit was based upon the analytical framework set forth in a companion case decided the same day, *Puyallup Tribe v. Port of Tacoma,* ____ F.2d ____ (9th Cir. 1983) (Appendix B).

The Ninth Circuit ruled that where a grant of real property to an Indian tribe includes within its boundaries a navigable water and the grant is made to a tribe dependent on the fishery resource in that water for survival, the grant must be construed to include the submerged lands if the Government was plainly aware of the vital importance of the submerged lands and the water resource to the tribe at the time of the grant.

The district court had jurisdiction pursuant to 28 U.S.C. § 1362. The Court of Appeals had jursdiction pursuant to 28 U.S.C. § 1291.

REASONS WHY WRIT SHOULD BE ISSUED

A. This Court Did Not Determine That Historical Tribal Dependence Upon Fishing Overcomes The Presumption Against The Conveyance By The United States To The Tribe Of Beds Of Navigable Waters Within An Indian Reservation.

1. *Montana v. United States.*

In *Montana v. United States,* supra this Court set forth the following principles to determine fee title to the beds of navigable waters within the boundaries of an Indian reservation.

First, the federal government holds land under navigable waters in trust for future states to be granted to those states when they enter the Union and assume sovereignty on an equal footing with the existing states.

Second, because control over the property underlying navigable waters is so strongly identified with the sovereign power of government, it will not be held that the United States has conveyed such land "except because of some special duty or exigency."

Third, the court deciding a question of title to the bed of navigable water must begin with a strong presumption against conveyance by the United States.

Fourth, the court must not infer the conveyance of the bed of a navigable water:

> "unless the intention was definitely declared or otherwise made plain," *United States v. Holt State Bank,* supra, 270 U.S. at 55, or was rendered "in clear and special words," *Martin v. Waddell,* supra, 41 U.S. at 411, or "unless the claim confirmed in terms embraces the land under the waters of the stream," *Packer v. Bird,* supra, 137 U.S. at 672.

Montana, v. United States, supra, 450 U.S. at 552.

Thus, this Court has stated that the conveyance of the bed of a navigable water to the tribe will not be inferred unless a special duty or exigency existed and the intention to convey:

1) was definitely declared or otherwise made plain;
2) was rendered in clear and special words; or
3) the claim confirmed in terms embraces the land under the waters of the stream.

Absent such a conveyance, the beds of navigable waters would be granted to the state when it entered the Union on an "equal footing" with the established states. *Pollard's Lessee v. Hagan,* 3 How 212, 222-223.

The Tribe in this case did not argue that the language in the Executive Order supported any inference that the Tribe was conveyed title to the bed of the White River. A similar argument by the Crow Indian Tribe was unsuccessful in the *Montana* case:

> Whatever property rights the language of the 1868 treaty created, however, its language is not strong enough to overcome the presumption against the sovereign's conveyance of that river bed. The treaty in no way expressly refers to the river bed, *Packer v. Bird,* supra, 137 U.S. at 672, nor was an intention to covey the river bed expressed in "clear and special words," *Martin v. Waddell,* supra, 41 U.S. at 411, or "definitely declared or otherwise made plain," *United States v. Holt State Bank,* 270 U.S.

> at 55. Rather, as in *Holt,* "the effect of what was done was to reserve in a general way for the continued occupation of the Indians what remained of their aboriginal territory."

Montana, supra, 450 U.S. at 554.

The 1874 Executive Order simply states that the "following tracts of land in Washington Territory . . . be withdrawn from sale or other disposition, and set apart as the Muckleshoot Indian Reservation, for the exclusive use of the Indians in that locality . . . ."

The Executive Order neither mentions the White River nor conveys title to the bed of that river to the Tribe. The land described is set apart for the "exclusive use" of the Indians.

Nor did the Tribe argue that because portions of the White River were wholly within the confines of the enlargement, that the United States intended to convey title to the beds of that river to the Tribe. That argument was also expressly rejected in *Montana v. United States.*

> The mere fact that the bed of navigable water lies within the boundaries described within the treaty does not make the riverbed part of the conveyed land, especially when there is no express reference to the riverbed that might overcome the presumption against its conveyance.

Montana, supra, 450 U.S. at 554.

The *Montana* decision reaffirmed principles set forth fifty-five years earlier in *United States v. Holt State Bank,* 270 U.S. 49 (1926). In *Holt State Bank* this Court affirmed the decison of the Eight Circuit Court of Appeals that the bed of a navigable lake within the boundaries of the Red Lake Indian Reservation was not granted to the Chippewas because there was nothing in the pertinent treaties "which even approach[ed] a grant of right in lands underlying navigable waters; nor anything evincing a purpose to depart from the established policy, before stated, of treating such lands as held for the benefit of the future State." *Holt State Bank, supra,* 270 U.S. at 58-59.

This court in *Montana* did not overrule *Choctaw Nation v. Oklahoma,* 397 U.S. 620 (1970). *Choctaw Nation* held that the bed of the Arkansas River had been granted by the United States to the Choctaw and Cherokee Nations pursuant to the Treaty of Dancing Rabbit Creek in 1830 and the Treaty of New Echota in 1835. This

Court did, however, point out that *Choctaw Nation* was based upon "very peculiar circumstances" which "arose from the unusual history of the treaties there at issue" and the United States government's promise that the reserved lands would never become part of any state. *Montana, supra,* 450 U.S. at 555-556, n.5[1].

This Court in *Montana* chose not to adopt the rule of construction pointed out in *Choctaw Nation* that a treaty should be interpreted as the Indians would have understood it, if the effect of such an interpreation would divest a State of title to the bed of a navigable river. *Montana, supra,* 450 U.S. at 552-553; *id.* at 567-568 (Stevens, J. concurring).

This Court did, however, point out that "at the time of the treaty the Crows were a nomadic tribe dependent chiefly on buffalo, and fishing was not important to their diet or way of life." *Montana, supra,* 450 U.S. at 556.

It is submitted by the petitioners that the fishing dependency of the tribe relates solely to whether or not a "public exigency" existed that would have justified the United States conveying to a tribe the bed of a navigable water. If such a "public exigency" existed, the intention to grant the bed must still have been declared or otherwise made plain, or rendered in clear and special words.

2. ***Rulings by the Courts of Appeals***

a. *The Ninth Circuit Court of Appeals*

The Ninth Circuit Court of Appeals has concluded that historical tribal dependence on fishing overcomes the presumption against the conveyance of the bed of a navigable water in four post-*Montana* decisions, including this case.[2]

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1. As the result of the *Choctaw Nation* decision the Arkansas River is the only navigable river which the United States Supreme Court has found to be owned by an entity other than a state. *Cherokee Nation v. Muskogee City - County Port Authority,* 555 F.Supp. 1015, 1017 (1983).

2. *Confederated Salish and Kootenai Tribe v. Namen,* 665 F.2d 1951 (9th Cir. 1982), *cert. denied,* 103 S.Ct. 314 (1982); *United States v. Washington,* 694 F.2d 188 (9th Cir. 1982); *Puyallup Indian Tribe v. Port of Tacoma,*____ F.2d____ (9th Cir. 1983); *Muckleshoot Indian Tribe v. Trans-Canada Enterprises,* 713 F.2d 455 (9th Cir. 1983).

The Ninth Circuit has concluded, however, in one case that the tribe was not dependent enough upon a river to overcome the presumption.[3]

In *Confederated Salish and Kootenai Tribes v. Namen,* 665 F.2d 1951 (9th Cir. 1982), *cert. denied,* 103 S. Ct. 314 (1982), the Ninth Circuit was requested to review post-*Montana* the issue of title to the bed of the south half of Flathead Lake in Montana. The Ninth Circuit had held in *Montana Power Company v. Rochester,* 127 F.2d 189 (9th Cir. 1942), that the United States held title to that bed in trust for the Confederated Tribes.

In reviewing the title question the Ninth Circuit upheld the *Rochester* ruling by *stare decisis,* the language of the treaty involved, and the circumstances surrounding the treaty's negotiation.

In the *Namen* case the Ninth Circuit ruled that *stare decisis* applied particularly because *Rochester* had affected title to land and hydro-electric power development on the Flathead Reservation had proceeded for half a century on the assumption that the Confederated Tribes had title to the bed of the south half of the lake. *Namen, supra,* 665 F.2d at 960.

The Ninth Circuit also relied upon the terms of the Hell Gate Treaty which did expressly refer to Flathead Lake in defining the boundaries of the reservation.

> It would have been pointless, and quite likely deceptive, to have the northern boundary of the reservation bisect the Flathead Lake unless it was intended to convey title to the southern half of that lake to the Indians. Certainly the most natural and intelligible way of understanding the boundary description is to infer an intent to convey the southern lakebed.

Namen, supra, 665 F.2d at 962.

As a third basis for the Court's decision, it also pointed out that the Kootenai Indians, one of the confederated tribes, had depended heavily upon fishing, and that that circumstance surrounding the negotiation of the treaty distinguished it from *Montana.*

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3. *United States v. Aranson,* 696 F.2d 654 (9th Cir. 1983).

> There are factual differences between *Montana* and *Confederated Salish [Namen]*. However, as Justice Rehnquist points out [103 S. Ct. 314 (Rehnquist, J., dissenting), denying cert. to *Namen*], the exact limits of the *Montana* holding are not clear. Given the importance of certainty where issues of ownership of land are involved, the possiblity of conflict suggested by Justice Rehnquist warrants consideration of the issue by the Supreme Court.

Namen, supra, 665 F.2d at 962.

In *United States v. State of Washington,* 694 F.2d 188 (9th Cir. 1982), the Ninth Circuit resolved a dispute over Indian fishing rights by holding that the Quinault Indians owned a lakebed because it was specifically included in and formed a boundary of their reservation and they were dependent upon fishing when the treaty was signed.

The Ninth Circuit relied heavily upon its prior decision in *Namen.* It did, however, acknowledge that its decision might not be consistent with *Montana* and requested that this Court address that issue.

> There are factual differences between *Montana* and *Confederated Salish [Namen]*. However, as Justice Rehnquist points out [103 S. Ct. 314 (Rehnquist, J., dissenting), denying cert. to *Namen*], the exact limits of the *Montana* holding are not clear. Given the importance of certainty where issues of ownership of land are involved, the possiblity of conflict suggested by Justice Rehnquist warrants consideration of the issue by the Supreme Court.

United States v. State of Washington, 694 F.2d 188, 189 (9th Cir. 1982).

In *United States v. Aranson,* 696 F.2d 654 (9th Cir. 1983), however, the Ninth Circuit reached a different result in determining title to the easterly half of the bed of the Colorado River. The dispute was whether or not that bed was included within the Colorado River Indian Reservation.

The Ninth Circuit in *Aranson* stated as follows:

> The *Montana* decision forecloses any argument that Congress intended to convey land underlying navigable waters unless an express reference to the bed beneath the waters can be found in the grants establishing the reservation.

Aranson, supra, 696 F.2d at 664.

The Ninth Circuit further recognized that *Montana* had displaced the rule of construction that treaties should be interpreted as the Indians would have understood them if the effect of such an interpretation would divest a state of title to the bed of a navigable water. *Aranson, supra,* 696 F.2d at 664, n.7.

Nothwithstanding this analysis, the Ninth Circuit went on to conclude that "*Montana* permits a court to infer congressional intent to convey the bed beneath navigable waters if the Indians can prove they depended heavily on the particular body of water." *Aranson, supra,* 696 F.2d at 666. It then ruled that these Indians were not dependent enough upon the Colorado River to overcome the presumption.

In *Puyallup Indian Tribe v. Port of Tacoma,* ____F.2d____(9th Cir. 1983) and this case, *Muckleshoot Indian Tribe v. Trans-Canada Enterprises,* 713 F.2d 455 (9th Cir. 1983), the Ninth Cirucit specifically held that where a reservation includes within its boundaries a navigable water and the tribe is dependent upon fishing, then the reservation includes the bed of the navigable water if the United States was aware that the water resource was important to the tribe. *Puyallup Indian Tribe, supra,* ____ F.2d ____; *Muckleshoot Indian Tribe, supra,* 713 F.2d at 457.

The Ninth Circuit in the *Puyallup* and *Muckleshoot* cases found that *Montana* had not overruled the principle set forth in *Choctaw Nation* that treaties must be interpreted as the Indians would have understood them and that any doubt should be resolved in the Indians' favor. That principle was critical to the decision reached.

This interpretation of *Montana* is in direct conflict with the concurring opinion of Justice Stevens in that case, *Montana, supra,* 450 U.S. 567-569, with *Aranson, supra,* and with a decision of the Seventh Circuit Court of Appeals.

b. *Seventh Circuit Court of Appeals*

In *State of Wisconsin v. Baker,* 698 F.2d 1323 (7th Cir. 1983), the Seventh Circuit upheld the judgment of the district court that the 1854

treaty between the United States and the Chippewa Indians of Lake Superior and the Mississippi River did not confer upon the Indians the exclusive right to fish and hunt in the waters of navigable lakes within the outer boundaries of the reservation established.

In so ruling, the Seventh Circuit disagreed with the Ninth Circuit's interpretation of *Montana.*

First, the Seventh Circuit found that the rule that Indian treaties are to be interpreted as the Indians would have understood them does not apply when the effect of such a rule would be to divest a state of its sovereign power. *Baker, supra,* 698 F.2d 1334, n.12.

Second, the Seventh Circuit found that the importance to the tribe of fisheries was not sufficient to overcome the presemption that the United States did not grant its rights in the navigable waters to the tribe.

> Defendants argue that the importance to the Band of fisheries secure from the threat of public invasion was sufficiently great in 1854 to overcome this presumption. The district court disagreed and so do we. There is nothing in the language or history of the treaties to suggest that in 1854 the United States was more solicitous of Chippewa fishing and hunting rights in navigable waters than of state sovereignty.

Baker, supra, 698 F.2d at 1335.

The Seventh Circuit's interpretation of *Montana* is inconsistent with the interpretation of the Ninth Circuit.

B. This Court Should Determine That Historical Tribal Dependence Upon Fishing Does Not Overcome The Presumption.

There is no dispute that the ancestors of the Muckleshoot Indians depended upon use of the White River for fishing purposes. That use should have been and was protected by the terms of the Treaties and the Executive Order. Not to have had that use would have destroyed their hopes for economic self-sufficiency and survival.

The fact of this historical dependence upon fishing does not necessarily mean that the United States would have intended to grant the bed of this river to the ancestors of the Muckleshoot Tribe.

Those fishing rights were specifically protected under Article III of the Treaty of Medicine Creek and Article V of the Treaty of Point Elliott. Those fishing rights have been protected by numerous federal court decisions. *Puyallup Tribe v. Washington Game Department,* 433 U.S. 165, 53 L. Ed. 2d 667 (1977).

The Muckleshoot Tribe seeks to extend the historical fishing rights guaranteed by the treaties to title to the dry bed of the White River. The right to use the river is an entirely separate and distinguishable element of real property from title to the bed of the river itself.

The Muckleshoot Tribe fails to appreciate that distinction and it would have this Court conclude that the guarantees of fishing and water rights also evince an intent by the United States to grant the bed of the river itself. There is no basis in law or logic for reaching that conclusion.

Indeed, the rights of fishing, boating, swimming, and other related purposes are generally regarded as corollary to the right of navigation in the use of public waters rather than related to title to the bed of the waterway itself. *Wilbour v. Gallagher,* 77 Wn.2d 306, 316, 462 P.2d 232, 239 (1969). *Witcher v. State,* 87 N.H. 405, 181 A. 549 (1935). *Nelson v. DeLong,* 213 Minn. 425, 7 N.W.2d 342 (1942).

The Muckleshoot Tribe's commingling of fishing and water rights with title to the bed lacks precision. These interests are obviously related, but are also clearly distinguishable.

> Water, like air, being movable and unfixed, and incapable of individual appropriation and disposition, necessarily must be subject to public control for the general welfare. No one but the owner of land has the right to reduce to possession such common property as may be above, beneath, or on the surface of such land; but even he cannot exercise such right except as the state may permit. The water of a stream, lake or pond cannot be dealt with as real property on account of its mobile and evanescent nature; but while it is over a particular tract of land it is part of such land, and a deed to the land would pass the water on it at the time. One may own the land on both sides of a stream, including all the soil over which the water of the stream flows, but he has no absolute ownership in the waters of such stream. However, a right may be acquired to use running water, and the law regards such right as property and protects it as such. There may be a right to use the water but not absolute ownership of its corpus.

1A *Thompson on Real Property*, § 261, pp. 320-321.

This commingling of interests is the only argument the Muckleshoot Tribe puts forth to overcome the strong presumption against the conveyance of the bed of the White River. This is the only argument that the Muckleshoot Tribe puts forth to establish that a "special duty or exigency" existed and that the intention by the United States to convey the bed "was definitely declared or otherwise made plain." *Montana, supra*, 450 U.S. at 552.

This argument does not hold up under strict scrutiny. Fishing rights were protected by the Treaties both within and outside of the reservation. Historical dependence upon fishing should not overcome the presumption that the government has not limited its sovereign power by granting the bed of a navigable river.

The Muckleshoot Tribe cites *Alaska Pacific Fisheries v. United States*, 248 U.S. 78 (1918) in support of its argument.

The *Alaska Pacific Fisheries* case was a suit by the United States to enjoin a tribal corporation from maintaining an extensive fish trap erected by it in navigable waters off the Annette Islands in Alaska. The fish trap was erected approximately 600 feet from the high tideline of one of the islands and the question before the court was whether or not the lands reserved for the tribe included the waters and submerged lands adjacent to the islands.

> The principal question for decision is whether the reservation created by the Act of 1891 embraces only the upland of the island or includes as well the adjacent water and submerged land. The question is one of construction — of determining what Congress intended by the words "the body of lands known as Annette Islands."

Alaska Pacific Fisheries, supra, 248 U.S. at 87.

In order to determine what Congress intended by "the body of lands known as Annette Islands," the Court considered the fishing background of the tribe. The Court concluded as follows:

> It did not reserve merely the site of their village, or the island on which they were dwelling, but the whole of what is known as

> Annette Islands, and referred to it as a single body of lands. This, as we think, shows that the geographical name was used, as is sometimes done, in a sense embracing the intervening and surrounding waters, as well as the upland — in other words, as descriptive of the area comprising the islands.

Alaska Pacific Fisheries, supra, 428 U.S. at 89.

The *Alaska Pacific Fisheries* case was a dispute over fishing rights and to resolve that dispute this Court had to define "the body of lands known as Annette Islands" as used in the Act of 1891. This Court concluded that the navigable waters were within the reservation.

CONCLUSION

For all of the foregoing reasons the petitioners respectfully request that a writ of certiorari should issue to review the judgment of the Ninth Circuit Court of Appeals.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

THE MUCKLESHOOT INDIAN TRIBE:
AGATHA JERRY STARR; DONALD JERRY;
LAWRENCE JERRY; BERT MOSES; HERMAN MOSES;
CECIL MOSES; and HOWARD MOSES,
Plaintiffs-Appellees

v.

TRANS-CANADA ENTERPRISES, LTD.;
SYNERGY INTERNATIONAL, LTD.; and
HERBERT GUENTHER,
Defendants-Appellants.

No. 82-3439
D.C. NO. C77-909R
OPINION

Appeal for the United States District Court
for the Western District of Washington
Hon. Barbara J. Rothstein, District Judge, Presiding.

Argued and Sumbitted: January 4, 1983

BEFORE: BROWNING, Chief Judge, and FLETCHER and
PREGERSON, Circuit Judges.

PER CURIAM:

This appeal involves a question of title to the former bed of the White River as it passes through the Muckleshoot Indian Reservation. The district court found that the United States had reserved the bed of the river for the use of the Tribe when the Government, by Excutive Order, expanded the Muckleshoot Reservation in 1874. From this adverse judgment, appellants (Trans-Canada) appeal. This court's jurisdiction rests on 28 U.S.C. § 1291 (1976). We affirm the district court's carefully considered judgment.

I

In December 1977, plaintiffs (Muckleshoot Tribe) filed suit in district court for declaratory judgment, quiet title, and ejectment, seeking to assert a claim to certain lands that were formerly the bed of the White River as it passed through the Muckleshoot Reservation.

The Muckleshoot Tribe comprises decendants of Indians who once lived in villages along many of the Puget Sound riviers, including the White River. Ancestors of the Muckleshoot Tribe were parties to the Treaties of Medicine Creek and Point Elliott in 1854. *See generally* A. Josephy, *Now That the Buffalo's Gone* 181-85 (1982). These treaties ceded Indian land in Western Washington to the United States and reserved land for the exclusive use of the signatory tribes. In addition, the treaties secured to the tribes on- and off-reservation fishing rights. *See* Treaty of Medicine Creek, Dec. 26, 1854, 10 Stat. 1132; Treaty of Point Elliott, Jan. 22, 1855, 12 State. 927.

The original Muckleshoot Reservation had no direct access to any of the Tribe's traditional fishing streams, however. The Tribe was unhappy with this arrangement and repeatedly lodged protests with the Government between 1856 and 1874. In 1874, President Grant signed an Executive Order setting apart five alternate sections of land through which the White River flowed as an enlargement to the Muckleshoot Reservation.[1] The enlargement was a direct response to the Tribe's desire to have a traditional fisher within the reservation boundaries.

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1. The order in its entirety states:

> It is hereby ordered that the following tracts of land in Washington Territory: Sections 2 and 12 of township 20 north, range 5 east, and sections 20, 28 and 34, of township 21 north, range 5 east, Willamette meridian, be withdrawn from sale or other disposition, and set apart as the Muckleshoot Indian Reservation, for the exclusive use of the Indians in that locality, the same being supplemental to the action of the Department approved by the President January 20, 1857.

The brevity of the Executive Order is not unusual. *See, e.g., Skokomish Indian Tribe v. France,* 320 F.2d 205, 206-07 (9th Cir. 1963) (quoting an executive orde of Feb. 25, 1874).

In 1874, the White River had a north and a south channel as it flowed through the reservation. The north channel was navigable, the south channel less clearly so. By 1915, the south channel was dry. Allotments riparian to the south channel made prior to 1915, however, included the bed of the south channel in the acreage assigned to individual Indian families. These conveyances were premised on the government surveyor's conclusion that the south channel was not navigable. Trans-Canada claims title to the bed of the former south channel as the successor in interest to the Indian allottees.

Below, the Tribe argued, and the district court found, that the south channel was indeed navigable at the time of the allotment survey. Consequently, title to the riverbed could not have been included in the original allotments. Moreover, the district court concluded that title to the navigable south channel was conveyed to the Tribe by the 1874 Executive Order and that no act in the intervening years had divested the Tribe of the title to the riverbed it received in 1874. Thus, the district court ejected Trans-Canada and confirmed the Tribe's title to the former riverbed.

With respect to the north channel of the White River, the court recognized that the channel had moved appreciably southward since 1874. The court found that this movement was the result of avulsion rather than accretion or erosion and hence that title to the north channel riverbed as it lay in 1874 remained with the original owner of the riverbed absent a subsequent conveyance. *See Puyallup Tribe of Indians v. Port of Tacoma,* ____ F.2d____ ,____ (9th Cir. 1983). Since the district court found no subsequent conveyance, it ejected appellants and confirmed the Tribe's title to the former north channel riverbed as it lay in 1874.

Appellants, ejected possessors of the former south and north channel riverbeds, appealed the district court's decision, arguing that the trial court erred in finding a conveyance of the riverbed to the Tribe in the 1874 Executive Order. This court, by order, remanded the case to the district court for reconsideration in light of *Montana v. United States,* 450 U.S. 544 (1981). The district court affirmed its original judgment in favor of the Tribe. Trans-Canada has again appealed on the same ground. The appeal is timely.

II

Our decision today in *Puyallup Tribe of Indians v. Port of Tacoma,* ____F.2d ____(9th Cir. 1983), establishes the analytic framework for resolving the question of whether the United States conveyed to the Muckleshoot Tribe in 1874 the bed of part of the White River. In *Puyallup,* we concluded that

> where a grant of real property to an Indian tribe includes within its boundaries a navigable water and the grant is made to a tribe dependent on the fishery resource in that water for survival, the grant must be construed to include the submerged lands if the Government was plainly aware of the vital importance of the submerged lands and the water resource to the tribe at the time of the grant.

____F.2d at ____ (footnote omitted).

We reached this conclusion after a careful reading of *Montana v. United States,* 450 U.S. 544 (1981), and the cases cited therein, especially *Alaska Pacific Fisheries v. United States,* 248 U.S. 78 (1918), and *Skokomish Indian Tribe v. France,* 320 F.2d 205 (9th Cir. 1963). We gleaned from these cases, first, the proposition that the avoidance of hostilities arising from a tribe's inability to reach a water resource on which it depends for survival can create a "public exigency" within the meaning of *Shively v. Bowlby,* 152 U.S. 1, 48 (1893), and, second, the principle that, where such an exigency exists, the United States' clear awareness of the tribe's needs taken together with the principle of construction resolving any ambiguities in agreements with the Untied States in favor of the Indian tribes warrants the further conclusion that the Government intended to meet the tribe's needs by granting to the Indians the land and the water on which they were dependent for survival. *See Choctaw Nation v. Oklahoma,* 397 U.S. 620, 631 (1970), *cited in Montana v. United States,* 450 U.S. at 555-556, n.5.

In this case, each of the requirements set forth in *Puyallup* (derived from *Montana v. United States*) is met.[2] First, as the district court found,

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2. *As in Puyallup,* we do not mean to imply that only where these conditions are met is a conclusion that the United States granted the bed of a navigable water to an Indian tribe justified. *See Puyallup Tribe of Indians v. Port of Tacoma,* _____ F.2d at_____ n.7 (9th Cir. 1983).

the Muckleshoot Tribe's dissatisfaction with its orginal reservation gave rise to a public exigency because, as "[t]he [Indian] agents and officers repeatedly warned[,] trouble would result unless the [Muckleshoot] Reservation was enlarged" to include one of the Tribe's traditional fisheries. The United States was clearly aware "that the focus of the Muckleshoot's world was on the rivers along which they lived . . . ." The Government knew, at least by the date of the 1874 Executive Order expanding the Muckleshoot Reservation, that the Indians "depended on watercourses, not only for food and materials, but also in their manner of self-identification, language and religious practices." Further, "Muckleshoot ancestors, placed by the United States government on a reservation along the banks of a particular river, would naturally assume that the river belonged to them for their communal use." The Government's Indian agents understood that "[t]he capture of fish was an essential source of [the Indians'] food supply . . . ." Moreover, as in *Puyallup,* the methods of fishing employed by the Muckleshoot depended on the Tribe's ability to use not only the waters in which they found fish, but also the lands beneath these waters on which they constructed their fish traps and weirs. Finally, and most importantly, unlike the situation in *Montana,* where the Crow Reservation was designated with no special regard to the fact that it included a section of the Big Horn River, the Muckleshoot Reservation was expanded at the insistence of the Indians specifically to include a section of the White River on which the Tribe could continue to exercise its traditional fishing lifestyle.

In light of these facts, it was proper for the district court to conclude that, in 1874 when the United States expanded the Muckleshoot Reservation to include sections of the White River, the Government intended, and the Tribe understood, the grant of an expanded reservation to include the bed of the river and its waters as well as the land along either bank.[3] *See Puyallup,* ____F.2d at____ Accordingly, the judgment of the district court is AFFIRMED.

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3. Trans-Canada does not argue on appeal that the district court erred in its decision on the issues of navigability and the nature of the changes in the river's course. We do not consider, therefore, the district court's resolution of these issue.

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PUYALLUP INDIAN TRIBE,
Plaintiff-Appellee,

v.

PORT OF TACOMA,
Defendant-Appellant

No. 81-3480
D.C. No. CV 80-164-JET
OPINION

Appeal from the United States District Court
for the Western District of Washington
The Hon. Jack E. Tanner, District Judge, Presiding.

Argued and Submitted: January 4, 1983

BEFORE: BROWNING, Chief Judge, FLETCHER AND PREGERSON, Circuit Judges.

FLETCHER, Circuit Judge:

This case involves a question of title to part of the former bed of the Puyallup River. The Port of Tacoma appeals from a ruling by the district court that the Tribe received title to the riverbed by treaty in 1857 and that a river rechannelization project in 1948-50 that exposed the former riverbed was an avulsive change of the river's course which left title to the bed in the Tribe as the pre-avulsion owner. *See Puyallup Tribe of Indians v. Port of Tacoma,* 525 F.Supp. 65 (W.D. Wash. 1981). The Port further challenges the court's ruling that the State of Washington and the United States need not be joined as necessary parties. We have jurisdiction under 28 U.S.C. § 1291 (1976) and affirm.

Prior to the arrival of white settlers in the mid-nineteenth century, the Puget Sound area and the rivers that drain into it, including the Puyallup, were inhabited by Indians known as Coast Salish. In 1854, representatives of various bands and groups of these Indians entered into the Treaty of Medicine Creek with the United States. In return for a number of reservations, a guarantee of continued fishing rights, and other promises, the Indians gave up their claim to their aboriginal homeland.

One of the Indian groups that signed the Treaty of Medicine Creek was known as the Puyallup Tribe. These Indians settled on a reservation on the south side of Commencement Bay near present-day Tacoma, Washington. This site did not include access to the Puyallup River and its fishery on which the Puyallup Tribe depended. The Tribe was very dissatisfied with its reservation and agitated vigorously (and sometimes violently) for an enlargement of the reservation to include a section of the river.

The Government recognized the importance of the fishery to the Tribe as well as the importance of pacifying the Tribe to protect white settlers in the area. In 1856, following a meeting between the Government and the Tribe at Fox Island, the Government recommended an expansion of the Puyallup Reservation to include a section of the Puyallup River. On January 20, 1857, by Executive Order, President Pierce set aside certain land that encompassed a section of the Puyallup River near its mouth as an enlargement of the Puyallup Indian Reservation. *See* A. Josephy, *Now That the Buffalo's Gone* 181-85 (1982).

Over the next 100 years, most of the reservation was allotted to individual Indians and passed into individual Indian and non-Indian ownership. Since the Puyallup River was nagvigable, the allotments along the river were bounded by the ordinary high water mark of the river. The Port of Tacoma eventually took title to certain of the allotments abutting the north bank of the river.

Between 1948 and 1950, the United States Army Corps of Engineers (Army Corps) "straigthened" the Puyallup River, including the section of the river that passed through the reservation. As a result, a twelve-acre tract of the former riverbed was exposed. The Port of Tacoma was the owner of the uplands at the time of the rechannelization. It took

possession of the newly exposed riverbed. Since 1950, the Port has had possession and exercised control over the twelve acres of exposed former riverbed and has leased it to industrial tenants.

In 1980, the Puyallup Tribe filed suit claiming beneficial title to the twelve acres of exposed former riverbed. *See* 28 U.S.C. § 1362 (1976). The Tribe based its claim on the 1857 Executive Order granting to it an enlarged reservation that encompassed part of the Puyallup River. Three days before trial, the Port filed a motion based on Federal Rule of Civil Procedure 19(a), requesting that the United States and the State of Washington be joined as necessary parties. The motion was denied.

Following a bench trial, the district court ruled that (1) the 1857 Executive Order granted to the Tribe title to that part of the Puyallup River bed within the exterior boundaries of the grant; (2) no subsequent transactions had divested the Tribe of this title; (3) the 1948-50 rechannelization of the Puyallup that exposed the former riverbed was an avulsive change of the river's course under Washington law; and (4) consequently, the Tribe's title to the former riverbed was superior to that asserted by the Port of Tacoma. The Port timely appealed from the district court's judgment quieting title in the Tribe and ejecting the Port.

II

The Port first challenges the district court's refusal to join both the United States and the State of Washington as necessary parties under Federal Rule of Civil Procedure 19(a). We are not persuaded that the district court erred.

The United States, as the trustee holding legal title to all real property owned by the Tribe, obviously has an interest in this litigation and it will not be bound by any decree ensuing from this litigation unless it is formally joined as a party. *Fort Mojave Tribe v. LaFollette,* 478 F.2d 1016, 1018 (9th Cir. 1973). Absent joinder of the United States, a judgment entered in this case in favor of the Port will not necessarily render complete relief to the Port or protect the Port from inconsistent judgments. *See* Fed. R. Civ. P. 19(a). Nonetheless, the rule is clear in this Circuit and elsewhere that, in a suit by an Indian tribe to protect its interest in tribal lands, regardless of whether the United States is a necessary party under Rule 19(a), it is *not* an indispensable party in

whose absence litigation cannot proceed under Rule 19(b). *Fort Mojave Tribe,* 478 F.2d at 1017-18; *Choctaw and Chickasaw Nations v. Seitz,* 193 F.2d 456, 460-61 (10th Cir. 1951), *cert. denied,* 343 U.S. 919 (1952); *see also Oneida Indian Nation of New York v. County of Oneida,* 434 F.Supp. 527, 544-45 (N.D.N.Y. 1977) (collecting cases.[1]

We now turn to consider the Port's contention that the State of Washington is a necessary party to this proceeding. The Port assets that the State has an interest in this litigation because, upon admission of Washington to statehood in 1889, it received title to all navigable streams within its boundaries then owned by the United States. *See United States v. Ashton,* 170 F. 509, 512-13 (C.C.W.D. Wash. 1909). Thus, if the Tribe had not been granted equitable title to the Puyallup River bed by treaty or by executive order and if the 1948-50 river rechannelization were avulsive, the State, and not the Port or the Tribe, would own the exposed riverbed.

Rule 19(a) requires a district court to join an absent party if any one of three specific conditions obtains: (A) in the absence of the party complete relief cannot be granted to those persons who are already parties, Fed. R. Civ. P. 19(a) (1); (B) the absent party claims an interest relating to the action and is so situated that disposition in his absence may "as a practical matter" impair the absent party's ability to protect that interest, *id.* at 19(a) (2) (i); or (C) the absent party claims an interest relating to the action and is so situated that disposition in his absence may subject a joined party to an inconsistent obligation, *id.* at 19(a) (2)

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1. Minnesota v. United States, 305 U.S. 382, 386-88 (1939), and *Carlson v. Tulalip Tribes of Wash.,* 510 F.2d 1337, 1339 (9th Cir. 1975), do not hold otherwise. In both *Minnesota* and *Tulalip Tribes,* the litigation was instituted by non-Indians for the purpose of effecting the alienation of tribal or restricted lands, not by individual Indians or a tribe seeking to protect Indian land from alienation. *See Oneida Nation,* 434 F.Supp. at 545 (distinguishing cases). Whether the Tribe is the plaintiff or the defendant in any given suit would not seem particularly relevant in a joinder decision under Rule 19(b), according to the factors set forth in the rule. We do not question, however, the distinction established in our circuit by the *Fort Mojave* and *Tulalip Tribes* cases for determining indispensability under Rule 19(b).

(ii).[2] The "appropriate focus" in determining whether one or more of these conditions exist is on the "practical ramifications of joinder versus nonjoinder." *Northrop Corp. v. McDonnell Douglas Corp.*, 705 F.2d 1030, 1042 & n.14a (9th Cir. 1983). The district court's Rule 19(a) decision will not be reversed absent a showing of abuse of discretion. *Id.* at 1043.

The Port does not specify the particular Rule 19(a) ground upon which it relies. We do not find the State a necessary party under any of the rule's criteria.

Rule 19(a) (1) would require joinder of the State if the court could not otherwise grant "complete relief" to those already parties. *Eldredge v. Carpenters 46 Northern California Counties Joint Apprenticeship and Training Committee,* 662 F.2d 534, 537 (9th Cir. 1981). The essence of an action in ejectment, which this case is, is to settle title between the adverse claimant and the party in possession. The district court can therefore provide complete relief to the parties to this action without joining other parties who might also claim an interest in the same land. Accordingly, Rule 19(a) (1) does not require joinder of the State in this ejectment action, event though the State might in the future challenge the title of the Tribe or the Port to the riverbed.

Rule 19(a) (2) (i) seeks to prevent the results of litigation before the court from impairing the legal interest of an absent party. Since the State can assert any interest in might have in another action,[3] no legal interest

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2. Rule 19(a) provides in pertinent part:

Persons to be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

3. The State could suffer immediate practical impairment of its interests if, for instance, it were the Port's lessor but was not itself in possession of the riverbed. *See Washington v. United States,* 87 F.2d 421, 428-31 (9th Cir. 1936). Here, however, where neither the

it may have in the riverbed is impaired, regardless of the outcome of this action.[4]

Rule 19(a) (2) (ii) requires joinder to protect a party to the suit from inconsistent obligations by reason of a claimed interest of an absent party. Since the Tribe does not challenge the denial of the Rule 19(a) motion, we need reverse only if it is necessary to protect the Port's legal interests. We see no way in which the outcome of this ejectment action could possibly subject the Port to inconsistent obligations under two conflicting judgments.

A judgment adverse to the Tribe, based on a conclusion that the Tribe never received title to the bed, would not be inconsistent with a subsequent declaration requiring the Port to remove itself in favor of the state. A determination in some later suit between the State and the Port that the State's title is superior to that of the port, based perhaps on a conclusion that the 1948-50 rechannelization of the Puyallup was avulsive and not accretive, would simply not be inconsistent with a determination here that the Port's title was superior to that of the Tribe.

Footnote 3 (con't)

State itself nor any lessee of the State is asserted to be in possession of the riverbed, no practical impairment of the State's interests can result from an adjudication of who, between the Tribe and the Port, shall have possession of the riverbed.

4. *McShan v. Sherrill,* 283 F.2d 462, 463-64 (9th Cir. 1960), in which we held that landowners asserting a claim to property that was the subject of part of a quiet title action were parties who should have been joined, does not require a contrary conclusion. First, in *McShan,* record title to the land at issue was in the absentees. Hence, *any* ajudication in their absence would "place [] a cloud upon the title of the absent landowner." 283 F.2d at 463. By contrast, in the ejectment action before us, a determination of the right to possession between the Port and the Tribe will not, in any practical sense, place any cloud on any title the State might have, since in any event record title to the property is not in the State. More significantly, while the *McShan* absentees had paid "all taxes" on the property, presumably on the assumption that they in fact owned the property, there is no indication here that the State has incurred any economic detriment in reliance on any purported right of ownership of the riverbed. For this reason as well, we conclude that the possible practical effects of this litigation on the State's interests are of an entirely different order from that of those requiring joinder in *McShan.*

Nor would a conclusion in this case that the Tribe could not eject the Port from possession of the riverbed because the 1948-50 rechannelization was accretive subject the Port to the possibility of inconsistent obligations. As a "practical" matter, the Port now has possession of the riverbed and will retain possession if it prevails in this litigation. Even if it is determined in a subsequent suit between the State and the Port that the Tribe did not receive title to the exposed riverbed, that the rechannelization was avulsive, and thus that the State has title to the bed, the Port will thereby incur no inconsistent obligations. That it must remove itself in favor of the State is not an obligation inconcistent with a finding that it need not relinquish possession to the Tribe.

If the Tribe prevails, the Port may be ejected and may be contractually liable to its lessees for damages resulting from the ejectment. Such obligations would not be affected by a subsequent determination that the State has superior title to the Tribe. In any event, the Port would never again be entitled to possession.[5]

For these reasons, we conclude that the district court did not abuse its discreton in refusing to join the State of Washington or the United States as a party to this action.

III

We now turn to the merits. The Port challenges, on two dintinct grounds, the judgment of the district court ejecting the Port and quieting title to a portion of the former riverbed in the Tribe. First, it asserts that the United States did not convey title to the bed of the Puyallup River to the Puyallup Tribe either by treaty or by executive order. It contends that the Tribe lost whatever title it did have to the former bed when the river rechannelization project exposed the bed.

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5. If the Port were to attempt to eject the State after the latter had ejected the Tribe, asserting that the rechannelization was accretive, the Port would meet a collateral estoppel defense based on the necessary finding here that the rechannelization was avulsive.

A

Appellant, citing *Montana v. United States*, 450 U.S. 544 (1981), argues that the district court erred as a matter of law in concluding that the United States conveyed title to the bed of the Puyallup River to the Puyallup Tribe. Appellee counters that the district court's conclusion on this issue of the riverbed ownership is in accord with the Supreme Court's decision in *Montana v. United States* and that the district court's decision is supported by findings of fact which are not clearly erroneous. We agree with both parties to the extent that we find *Montana v. United States* controlling on the question of riverbed ownership. Accordingly, our analysis of the Tribe's claim of ownership of part of the former bed of the Puyallup River must begin with a close examination of the *Montana* decision.

In *Montana v. United States*, the Supreme Court considered a tribe's claim of title to the bed of a navigable river as it flowed through the tribe's reservation. 450 U.S. at 550-57. The Court's analysis of this issue starts from the premise that "[a] court deciding a question of title to the bed of a navigable water must . . . begin with a strong presumption against conveyance by the United States, . . . and must not infer such conveyance 'unless the intention was definitely declared or otherwise made very plain.' " *Id.* at 552 (quoting *United States v. Holt State Bank*, 270 U.S. 49, 55 (1926)). At the same time, the Court did not reject the analysis of *Choctaw Nation v. Oklahoma*, 397 U.S. 620 (1970), in which the "Court did construe a reservation grant as including the bed of a navigable water." *See Montana*, 450 U.S. at 555-56 n.5. Nor did it gainsay the equally important proposition set forth in *Choctaw Nation* that "treaties with the Indians must be interpreted as they would have understood them, . . . and any doubtful expressions in them should be resolved in the Indians' favor." 397 U.S. at 631.[6] Thus, when faced with a claim by an Indian tribe that it owns the bed of a navigable stream that flows through its reservation, we must accord appropriate weight to both

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6. This principle of treaty construction applies in equal force to statutes passed for the benefit of Indians, *Alaska Pac. Fisheries v. United States*, 248 U.S. 78, 89 (1918), and to executive orders, *Moore v. United States*, 157 F.2d 760, 762 (9th Cir. 1946); *see Skokomish Indian Tribe v. France*, 320 F.2d 205, 207-08 (9th Cir. 1963), *cert. denied*, 376 U.S. 943 (1964).

the principle of construction favoring Indians and the presumption that the United States will not ordinarily convey title to the bed of a navigable river. *See Confederated Salish and Kootenai Tribes v. Namen,* 665 F.2d 951, 961-62 (9th Cir.), *cert. denied,* 103 S. Ct. 314 (1982).

The Supreme Court's opinion in *Montana* provides considerable guidance as to how a court can give proper effect to both the presumption against conveyance and the principle of construction favoring Indians. First, the Court recognized that "establishment of an Indian reservation can be an 'appropriate public purpose' within the meaning of *Shively v. Bowlby,* 152 U.S. [1, 48 (1894)], justifying a congressional conveyance of a riverbed . . . ." 450 U.S. at 556. However, the Court also cautioned that "[t]he mere fact that the bed of a navigable water lies within the boundaries described in the treaty does not make the riverbed part of the conveyed land, especially when there is no express reference to the riverbed that might overcome the presumption against its conveyance." *Id.* at 554. The Court cited two cases, apparently to illustrate proper resolutions in the face of the competing principles: *Alaska Pacific Fisheries v. United States* and *Skokomish Indian Tribe v. France. See id.* at 556.

In *Alaska Pacific Fisheries v. United States,* 248 U.S. 78 (1918), the Court was called on to decide whether a grant by Congress of "the body of lands known as Annette Islands" to the Metlakahtla Indians included the submerged lands surrounding and between the islands. The court reviewed the history of the Annette Island Reservation and the Indian community and found:

> The Indians could not sustain themselves from the use of the upland alone. The use of the adjacent fishing grounds was equally essential. Without this the colony could not prosper in that location. The Indians naturally looked on the fishing grounds as part of the islands and proceeded on that theory in soliciting the reservation.

Id. at 89. Accordingly, the Court concluded that not only was Congress aware of the Indians' reliance on the adjacent fishing grounds but also, in view of the importance of fishing to the Indians,

> Congress . . . did not reserve merely the site of their village, or the island on which they were dwelling, but the whole of what is

> known as Annette Islands . . . embracing the intervening and surrounding waters as well as the upland . . . .

Id.

In *Skokomish Indian Tribe v. France,* 320 F.2d 205 (9th Cir. 1963), this court found that an Executive Order granting certain sections of land along the Hood Canal to the Skokomish Indians did not include a grant to the Tribe of tidelands below the ordinary high water mark. *Id. 210. The dispositive factor in construing the Executive Order to* at exclude a grant of the tidelands was the fact that the Tribe did not rely on the particular tidelands included in the reservation as an important source of food.

> The use of the tidelands by the Indian tribe, as disclosed by the evidence, does not support appellant's contention that the tidelands were essential to the Indians' livelihood and that the Indians accordingly must have understood they were to have the tidelands.
>
> . . . .
>
> It is true that shellfish and other forms of sea life were gathered by the Skokomish along the canal . . . . "[T]he usual locations at which shellfish were procured were miles from the reservation and were reached by canoe travel on Hood Canal"; and . . . "the tidelands in issue, particularly in Section 26, are not and were not a source of native shellfish in usuable quantities."

Id. at 210-11.

From the facts of *Skokomish Tribe* and *Alaska Pacific Fisheries,* we conclude that where a grant of real property to an Indian tribe includes within its boundaries a navigable water and the grant is made to a tribe dependent on the fishery resource in that water for survival, the grant must be construed to include the submerged lands if the Government was plainly aware of the vital importance of the submerged lands and the water resource to the tribe at the time of the grant.[7] In such a situation,

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7. We do not mean to suggest that this is the only circumstance in which the United States may be found to have granted the bed of a navigable water to an Indian tribe, but

the Government's awareness of the importance of the water resource to the Tribe taken together with the principle of construction resolving ambiguities in transactions in favor of the Indians warrants the conclusion that the intention to convey title to the waters and lands under them to the Tribe is "otherwise made very plain" within the meaning of *Holt State Bank*, 270 U.S. at 55, *quoted in Montana*, 450 U.S. at 552.

This conclusion is confirmed by the penultimate paragraph of that section of the *Montana* decision dealing with the question of title to the Big Horn River bed:

> Moreover, even though the establishment of an Indian reservation can be an "appropriate public purpose" within the meaning of *Shively v. Bowlby*, 152 U.S., at 48, justifying a congressional conveyance of a riverbed, see, *e.g., Alaska Pacific Fisheries v. United States*, 248 U.S. 78, 85, the situation of the Crow Indians at the time of the treaties presented no "public exigency" which would have required congress to depart from its policy of reserving ownership of beds under navigable waters for the future States. See *Shively v. Bowlby, supra*, at 48. *As the record in this case shows, at the time of the treaty the Crows were a nomadic tribe dependent chiefly on buffalo, and fishing was not important to their diet or way of life.* 1 App. 74. Cf., *Alaska Pacific Fisheries v. United States, supra*, at 88; *Skokomish Indian Tribe v. France*, 320 F.2d 205, 212 (CA0).

450 U.S. at 556 (emphasis added); *see also id.* at 570 (Blackmun, J., disssenting in part) (accepting majority's analysis, but concluding that there was a "public exigency" requiring Congress to convey bed of Big Horn River to tribe, since, *inter alia*, fishing was important to the Crow Tribe). Further, the recent Ninth Circuit decision in *Confederated Salish and Kootenai Tribes v. Namen* supports the conclusion that title to land submerged under navigable waters may pass to the tribe whose reservation encompasses the navigable water where that tribe is

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Footnote 7 (cont.)

it is certainly one of the clearest. See Confederated Salish and Kootenai Tribes v. Name, 665 F.2d 951, 961-62 (9th Cir.), *cert. denied*, 103 S. Ct. 314 (1982).

dependent on the water's resources for survival. 665 F.2d at 962 (the importance of fishing to the Kootenai Tribe cited as one of several factors distinguising *Namen* from *Montana*.)

In order to apply the teaching of *Montana* to the case before us, we review briefly those facts relevant to a determination of whether the United States made plain its intention to convey to the Puyallup Indians that portion of the Puyallup River bed that runs through their reservation. The Puyallup Tribe was one of the signatory tribes to the 1854 Treaty. Treaty of Medicine Creek, December 26, 1854, 10 Stat. 1132, 1132; *see also* A. Josephy, *Now That the Buffalo's Gone* 181-82 (1982). The Puyallup Indians have occupied the area around the Puyallup River, Commencement Bay, and surrounding parts of Southern Puget Sound since time immemorial. At the time the Tribe entered into the 1854 Treaty, its members " 'were heavily dependent upon anadromous fish for their subsistence and for trade with other tribes and later with the settlers. Anadromous fish was the great staple of their diet and livelihood. They cured and dried large quantities for year-round use, both for themselves and for others through sale, trade, barter and employment.' " *Washington v. Washington State Commercial Passenger Fishing Vessel Association,* 443 U.S. 658, 665 n.6 (1979) (quoting *United States v. Washington,* 384 F.Supp. 312, 406 (W.D. Wash. 1974)). Indeed, as the district court found, "[f]or Puyallup Indians, the fresh water courses of the area [from which they caught anadromous fish] were the center of their world and their lives . . . . Puyallup Indians conceived of their territory as the Puyallup River and the surrounding land . . . . The Puyallups' spiritual, religious and socal life centered around the river." *Puyallup Tribe of Indians v. Port of Tacoma,* 525 F.Supp. at 71. Governor Issac Stevens, who was primarily responsible for negotiating the Treaty of Medicine Creek with the Indians on behalf of the United States, was aware of the importance of the fisheries to the Indians. *Fishing Vessel Association,* 443 U.S. at 66. Nonetheless, the original treaty of 1854 granted the Puyallups a reservation removed from their river without ready access to their traditional fishing and village sites. In return for this unsuitable reservation, the Tribe relinquished its interest in its lands around Puget Sound so that the area could be opened for white settlement. *See generally* A. Josephy, *Now That the Buffalo's Gone* 181-85 (1982).

Needless to say, the Puyallups quickly recognized the inadequacy of their original reservation. As the district court found:

> Soon after the [1854] Treaty was signed, fighting broke out between Indians and non-Indians in the area, resulting in the deaths of many non-Indian settlers. Among the causes of those hostilities was the inadequacy of the area set aside as the Puyallup Reservation. One of the shortcomings of the Reservation was that it did not include the Tribe's traditional fishing areas and villages along the Puyallup River.

Puyallup Tribe of Indians v. Port of Tacoma, 525 F.Supp. at 72. The district court went on to find, based on expert testimony and documentary evidence, the following facts of particular importance to the question of riverbed ownership raised in the instance case:

> The United States sought to end . . . hostilities and gain peace [with the Puyallup and other Indians] by convening the Fox Island Council. The United States representatives expressed their awareness that the cause of the hostilities was the inadequacy of the Puyallup Reservation. Governor Stevens reminded the Indians that he had promised to modify the treaty reservations if they were unsuitable . . . .
>
> Stevens recognized and emphasized the importance of the Puyallup River when he spoke of the location of the expanded reservation.
>
> > You shall have a large Res. at Nisqually, one large Res. on the Puyaloop [sic] . . . . Now my children do you want a Res. on the Nisqually and one on the Puyaloop [sic], I will send word to the Great Father if you want Res. at those places.
>
> The Indians at the [Fox Island] Council also stressed the importance of the river, with such statements as:
>
> > I know that my people all want to live on the Puyallup [Stanop-se, a Puyallup].
>
> and
>
> > I am glad my people are going to have a Res. on the Puyallup. That is my home [Old Simon, a Puyallup].

> . . . . .
>
> The parties at the Fox Island Council thus agreed to expand the Puyallup Reservation to include the lower portion of the Puyallup River. The Commissioner of Indian Affairs and Secretary of Interior recommended that the agreement be adopted. President Pierce approved those recommendations in an Executive Order of January 20, 1857. Those recommendations show that the reservation was expanded pursuant to Article 1 of the Treaty of Medicine Creek. The expanded reservation included the property involved in this case.

Id. It is in light of these pertinent facts that we must apply *Montana v. United States.*[8]

The findings of the district court support the conclusion that the 1857 Executive Order was a response to a public exigency — avoiding hostilities between the Indians and settlers so that the Puget Sound area could be opened safely for settlement. *See United States v. Montana,* 450 U.S. at 556 (citing *Shively v. Bowlby,* 152 U.S. at 48).[9] The intention to convey title to the riverbed to the Puyallup Tribe was made very plain by the negotiations between Governor Stevens and the Tribe at Fox Island. First, as in *Alaska Pacific Fisheries,* it was important to the Indians who met at Fox Island to have dominion not only over the water but also over the land submerged beneath the water. *Compare Alaska Pacific Fisheries,* 248 U.S. at 87-90 (Indians sought to control non-Indian fish-trap built on submerged lands near the shore of the Annette Islands) *with Puyallup Tribe of Indians v. Port of Tacoma,* 525 F.Supp. 65, 71 (W.D. Wash. 1981) (Puyallup harvested fish ith wiers and traps, "substantial structures which spanned the width of the river

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8. The district court's findings of fact, quoted above, are not clearly erroneous. For the most part, the district court relied on the expert testimony of Dr. Barbara Lane as the basis for its findings with respect to the historical facts surrounding the Treaty of Medicine Creek, the Fox Island Council, the United States' interest in those proceedings, and the way of life and understanding that the Puyallup Tribe brought to the negotiations with the United States. Dr. Lane's expertise in this area was recognized in *United State v. Washington,* 384 F.Supp. 312, 350 (W.D. Wash. 1974), and the Port has offered no reason to doubt the reliability of her testimony.

9. The Tribe does not contend that the 1854 Treaty of Medicine Creek conveyed title to the bed of the Puyallup River to it. Rather, it relies on the 1857 Executive Order, which expanded the reservation under the terms of the Treaty, as the conveying agreement.

[and] were firmly implanted in the bed of the river"). Second, and more important, unlike the situation in *Montana,* where the Crow Reservation was designated without special regard to the fact that it included a section of the Big Horn River, the Puyallup Reservation, at the insistence of the Indians, was enlarged specifically to include a segment of the Puyallup River.

The appellant does not seriously argue that the Puyallups would have understood the 1857 grant of land in any way other than as a conveyance to them of a section of the Puyallup River. Accordingly, we hold that there is sufficient evidence in this case of an intent to convey lands beneath navigable waters to the Tribe to support its claim of beneficial ownership of the former Puyallup River bed. *See United States v. Aranson,* 696 F.2d 654, 664-66 (9th Cir. 1983). The district court's decision on this point is therefore affirmed.[10]

B

The Port further contends that, even if the 1857 Executive Order granted title to the riverbed to the Tribe, the rechannelization of the riverbed in 1948-50 shifted title to the bed to the Port, the owner of the uplands adjoining the pre-channelization riverbed. By contrast, the Tribe argues that the district court properly concluded that the change in the location of the river resulting from the rechannelization by the Army Corps was "avulsive" under Washington property law and thereby left

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10. The Port's further agruments against the conclusion that the Tribe received title to the bed of the Puyallup River in 1857 are meritless. The appellee, Puyallup Tribe, is the successor to the tribe that received title to the river in 1857. *See Puyallup Tribe v. Department of Game of Washington,* 433 U.S. 165, 169 n.7 (1977) (*Puyallup III*); F. Cohen, *Handbook of Federal Indian Law* 6 (1982 ed.). An Executive Order may convey title to land to an Indian tribe as effectively as any other conveyance from the United States. *See* F. Cohen, *supra,* at 472, 493-97 ("Generally, property rights in executive order reservations are similar to those in reservations created pursuant to treaty or statute . . . .").

Finally, the Port of Tacoma asserts that footnote 12 in *Puyallup III* bars the conclusion that the Tribe holds title to any part of the former Puyallup River bed. But as the Supreme Court acknowledged in that footnote, a claim of riverbed ownership was not even raised in *Puyallup III* and hence could not have been decided by the Court.

title to the riverbed in the Tribe, the party who owned the property immediately prior to the rechannelization. We conclude that the Tribe has the better position.[11]

The Puyallup River was navigable at the time allotments to the predecessors in title to the Port were made. Since grants of property bounded by a navigable river are deemed to be bounded by the ordinary high water mark of that river, *see Montana Power Co. v. Rochester,* 127 F.2d 189, 192 (9th Cir. 1942), the district court correctly ruled that the allotments of land adjoining the river made by the United States, on behalf of the Tribe, to the predecessors in title of the Port were bounded by the ordinary high water mark of the Puyallup River. *See* 525 F.Supp. at 76. Thus, after the allotments were made, the Tribe continued to have title to the riverbed of the Puyallup River within the reservation bounded on each side by the ordinary high water marks of the river.

For this reason, the common boundary of the properties to which the Port and the Tribe had title in 1948 was defined by the ordinary high water mark of the Puyallup River.[12] Consequently, we must consider whether the movement of the Puyallup River in 1948-1950 was an "avulsive" or an "accretive" change under Washington law. If the rechannelization were avulsive, title to the bed is in the Tribe. If accretive, the title to at least some, if not all, of the riverbed now lies in

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11. Under *Wilson v. Omaha Indian Tribes,* 442 U.S. 653, 671 & n.8, 676 (1979); the question of ownership of land that is allegedly part of an Indian reservation and has allegedly never been conveyed away by the United States of by the Tribe is an issue of federal law to be settled by reference to local law. *See United States v. Aranson,* 696 F.2d 654, 658 (9th Cir. 1983). Hence, Washington property law rules are incorporated into federal law to determine whether the Tribe now has title to the riverbed.

12. The Port does not challenge the district court's conclusion that all changes in the configuration of the Puyallup River from the date allotments were first made in 1886 up to the date of rechannelization were accretive changes under Washington law. *See* 525 F.Supp. at 76-77. The common boundary of the riverbed and the alotted property therefore changed over the years between 1886 and 1948 to conform to the actual ordinary high water mark of the river. Thus, in 1948, immediately prior to the rechannelization, the Tribe had title to the riverbed of the Puyallup, bounded by the ordinary high water marks of the river as they then lay. *See Ghione v. Washington,* 26 Wash. 2d 635, 650, 175 P.2d 955, 962 (1946) (where bank of river forms boundary of two estates, the boundary changes with accretive changes in river bank).

the Port as upland owner on one side of the bed, and the Tribe would have no basis for ejecting the Port.[13]

Several Wahsington cases make clear that whether a change in a physical aspect of a river is avulsive under Washington law depends on the *suddenness* and the *size* of the change. Where the change is both sudden and significant, the change is avulsive and the real estate boundaries dependent on the physical aspect of the water course are deemed fixed from that point onward as they were in fact immediately before the avulsive change took place.

In *Ghione v. State,* 26 Wash. 2d 635, 650, 175 P.2d 955, 962 (1946), for example, the Washington Supreme Court held that where a navigable riverbed had shifted by "a slow and continuous process," the boundary between the upland owner and the riverbed owner, defined as the ordinary high water mark of the river in the original grant, shifted along with the actual ordinary high water mark of the river. *See id.* (citing cases). Similarly, in *Harper v. Holston,* 119 Wash. 436, 443, 205 P. 1062, 1064 (1922), the court held that where the actual meander line of a non-navigable stream had not moved by any "sudden or violent changes," the boundary of a tract described as the meander line of the stream was in accordance with the actual meander line.

By contrast, in *Parker v. Farrell,* 74 Wash.2d 553, 555-56, 445 P.2d 620, 622-23 91968), the court held that where a "log jam" caused a river to "suddenly change [] its flow" and to move 500 feet to the south, the boundary of a tract defined as the thread of the river remained at the

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13. The accretion/avulsion principle of Washington real property law is an interpretive rule used in construing the terms of a grant describing the boundaries of real estate in words relating to a physical aspect of a river, e.g., a river's "ordinarily high water mark," or its "thread." The rule is based largely on the implied if not actual concerns of the owners of real estate.

The Washington Supreme Court has summarized the principle as follows:

> When the course of the stream changes, the boundary line may or may not shift with the stream. If the change is slow and imperceptible so that it may be classified as accretion or reliction, the boundary line shifts. If, however, the change of the stream is the original boundary line remains.

Parker v. Farrel, 74 Wash.2d 553, 554-55, 445 P.2d 620 622 (1968) (footnote omitted).

location where the thread of the river had been immediately before the change. Likewise, in *Ghione,* the court held that where a riverbed dried up as the result of a project of a commercial waterway district, the change was avulsive and left ownership of the former riverbed, now dry, in the party who had owned the riverbed when submerged. 26 Wash 2d at 651, 659-60, 175 P.2d at 962, 965.

The district court did not specifically find that the change in the configuration of the Puyallup during the rechannelization project in 1948-50 was sudden and significant. Rather, the court simply determined that the Army Corp had in fact "removed the river from its channel . . . and relocated it in the artificially constructed channel, leaving the property exposed as upland on the bank of the river." 525 F.Supp. at 73-74. Nevertheless, the record nowhere indicates, nor does the Port argue, that the movement of the river southward by at least half its width in a period of less than two years was not in fact sudden and significant as opposed to gradual and imperceptible. Under the principles set forth by the Washington Supreme Court, the change in the banks of the river resulting from the Army Corp project falls squarely within the category of avulsive changes. Consequently, we conclude that the district court correctly ruled that the Tribe holds title to the Puyallup riverbed as it existed immediately before the 1948-50 change.

The Port argues strenuously that, even if the 1948-50 change should ordinarily by treated as avulsive, *Strom v. Sheldon,* 12 Wash. App. 66, 527 P.2d 1382 (1974), requires a finding that the riverbed accreted to the property of the Port, the pre-change upland owner. This contention is meritless.

In *Strom,* one of the two landowners whose properties were bounded by the "thread" of a stream dredged the stream, moving the stream onto his property, and thereby left the former thread of the stream on dry land. *Id.* at 1383. As a result, the lot line of the non-dredging neighbor would have terminated far short of the river if the avulsive change rule were applied. *Id.* While assuming that the change in the river flow was in fact avulsive, the *Strom* court invoked a theory of "equitable treatment" first described by the Washington Supreme Court in an earlier case involving lakeshore navigation rights and refused to hold that the boundary line between the two property owners remained at the thread of the river immediately before the assumedly avulsive

dredging. *Id.* at 1384-86. Emphasizing that it was the "defendants' predecessor himself who caused the shift in the course" of the river and that to apply the avulsive rule would deprive the plaintiffs of a "valuable riparian interest," *id.* at 1386, the court ruled that the boundary line shifted along with the actual meander line of the stream, despite the avulsive change.

We do not read the decision of the Washington court of appeals in *Strom* to effect a radical abandonment of the well-settled principles governing real estate boundaries defined by physical aspects of watercourses in favor of a system of ad hoc determinations based on "equitable treatment" of the parties of all cases in which the allegedly avulsive change was the product of human as opposed to natural activity. To do so would be to ignore the decision of the Washington Supreme Court in *Ghione v. State,* where the court held that a change in the configuration of a river resulting from a commercial waterway project was avulsive. *See* 26 Wash. 2d 635, 655, 659-60, 175 P.2d 955, 965 (1946).

Rather, we construe *Strom* to carve out a limited exception where (1) one of the two conflicting landowners has in fact caused the river change which would otherwise be characterized as avulsive *and* (2) the other landowner would be deprived of river access by such a characterization. This is the more natural reading of the court's repeated emphasis in *Strom* of the fact that it was the acts of the defendants' own predecessor that caused the allegedly avulsive change. Since the Tribe was not responsible for the rechannelization, the special principle of "equitable treatment" epoused in *Strom* is inapplicable. The ordinary avulsive change rule fully applies.[14]

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14. The Port also contends that the district court abused its discretion in not certifying to the Washington Supreme Court the question of whether the change caused by the rechannelization of the Puyallup River was avulsive or accretive. *See Lehman Brothers v. Schein.* 416 U.S. 386, 390-91 (1974). This contention is meritless. Whatever further clarity certification would have provided, since the Washington law is rather well-defined, the trial judge's refusal to certify was not an abuse of discretion.

IV

For the reasons set forth above, we affirm the district court's ruling that the State of Washington and the United States need not be joined. We further affirm its well-considered determination that the Executive Order of 1857 granted title to the riverbed to the Tribe and that the rechannelization resulted in an avulsive change in the Puyallup River, fixing the boundaries of the riverbed property owned by the Tribe by the location of the ordinary high water marks of the river immediately before the relocation of the river.

AFFIRMED.

APPENDIX C

TREATY WITH NISQUALLYS &c. DEC. 26, 1854.

FRANKLIN PIERCE,

Dec. 26, 1854.

PRESIDENT OF THE UNITED STATES OF AMERICA,

TO ALL AND SINGULAR TO WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS a treaty was made and concluded on the She-nah-nam, or Medicine Creek, in the Territory of Washington, on the twenty-sixth day of December, one thousand eight hundred and fifty-four, between the United States of America and the Nisqually and other bands of Indians, which treaty is in the words following, to wit: —

Articles of agreement and convention made and concluded on the She-nah-nam, or Medicine Creek, in the Territory of Washington, this twenty-sixth of December, in the year one thousand eight hundred and fifty-four, by Isaac I. Stevens, governor and superintendent of Indian affairs of the said Territory, on the part of the United States, and undersigned chiefs, headmen, and delegates of the Nisqually, Puyallup, Steilacoom, Squawksin, S'Homamish, Steh-chass, T'Peeksin, Squi-aitl, and Sa-heh-wamish tribes and bands of Indians, occupying the lands lying round the head of Puget's Sound and the adjacent inlets, who, for the purpose of this treaty, are to be regarded as one nation, on behalf of said tribes and bands, and duly authorized by them.

ARTICLE I. The said tribes and bands of Indians hereby cede, relinquish, and convey to the United States, all their right, title, and interest in and to the lands and country occupied by them, bounded and described as follows, to wit: Commencing at the point on the eastern side of Admiralty Inlet, known as Point Pully, about midway between Commencement and Elliott bays; thence running in a southeasterly direction, following the divide between the waters of the Puyallup and Dwamish, or White rivers, to the summit of the Cascade Mountains; thence southerly, along the summit of said range, to a point opposite the main source of the Skookum Chuck Creek; thence to and down said creek, to the coal mine; thence northwesterly, to the summit of the Black Hills; thence northerly, to the upper forks of the Satsop River; thence northeasterly, through the portage known as Wilkes's Portage, to Point

Southworth, on the western side of Admiralty Inlet; thence round the foot of Vashon's Island, easterly and southeasterly, to the place of beginning.

ARTICLE II. There is, however, reserved for the present use and occupation of the said tribes and bands, the following tracts of land, viz: The small island called Klah-che-min, situated opposite the mouths of Hammersley's and Totten's inlets, and separated from Hartstene Island by Peale's Passage, containing about two sections of land by estimation; a square tract containing two sections, or twelve hundred and eighty acres, on Puget's Sound, near the mouth of the She-nah-nam Creek, one mile west of the meridian line of the United States land survey, and a square tract containing two sections, or twelve hundred and eighty acres, lying on the south side of Commencement Bay; all which tracts shall be set apart, and, so far as necessary, surveyed and marked out for their exclusive use; nor shall any white man be permitted to reside upon the same without permission of the tribe and the superintendent or agent. And the said tribes and bands agree to remove to and settle upon the same within one year after the ratification of this treaty, or sooner if the means are furnished them In the mean time, it shall be lawful for them to reside upon any ground not in the actual claim and occupation of citizens of the United States, and upon any ground claimed or occupied, if with the permission of the owner or claimant. If necessary for the public convenience, roads may be run through their reserves, and, on the other hand, the right of way with free access from the same to the nearest public highway is secured for them.

ARTICLE III. The right of taking fish, at all usual and accustomed grounds and stations, is further secured to said Indians, in common with all citizens of the Territory, and of erecting temporary houses for the purpose of curing, together the the privilege of hunting, gathering roots and berries, and pasturing their horses on open and unclaimed lands; *Provided, however,* That they shall not take shell fish from any beds staked or cultivated by citizens, and that they shall alter all stallions not intended for breeding horses, and shall keep up and confine the latter.

ARTICLE IV. In consideration of the above cession, the United States agree to pay to the said tribes and bands the sum of thirty-two thousand five hundred dollars, in the following manner, that is to say: For the first year after the ratification hereof, three thousand two hundred and fifty

dollars; for the next two years, three thousand dollars each year; for the next three years two thousand dollars each year; for the next four years fifteen hundred dollars each year; for the next five years twelve hundred dollars each year, and for the next five years one thousand dollars each year; all which said sums of money shall be applied to the use and benefit of the said Indians, under the direction of the President of the United States, who may from time to time determine, at his discretion, upon what beneficial objects to expend the same. And the superintendent of Indian affairs, or other proper officer, shall each year inform the President of the wishes of said Indians in respect thereto.

ARTICLE V. To enable the said Indians to remove to and settle upon their aforesaid reservations, and to clear, fence, and break up a sufficient quantity of land for cultivation, the United States further agree to pay the sum of three thousand two hundred and fifty dollars, to be laid out and expended under the direction of the President, and in such manner as he shall approve.

ARTICLE VI. The President may hereafter, when in his opinion the interests of the Territory may required, and the welfare of the said Indians be promoted, remove them from either or all of said reservations to such other suitable place or places within said Territory as he may deem fit, on remunerating them for their improvements and the expenses of their removal, or may consolidate them with other friendly tribes or bands. And he may further, as his discretion, cause the whole or any portion of the lands hereby reserved, or of such other land as may be selected in lieu thereof, to be surveyed into lots, and assign the same to such individuals or families as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable. Any substantial improvements heretofore made by any Indian, and which he shall be compelled to abandon in consequence of this treaty, shall be valued under the direction of the President, and payment be made accordingly therefor.

ARTICLE VII. The annuities of the aforesaid tribes and bands shall not be taken to pay the debts of individuals.

ARTICLE VIII. The aforesaid tribes and bands acknowledge their dependence on the government of the United States, and promise to be friendly with all citizens thereof, and pledge themselves to commit no depredations on the property of such citizens. And should any one or more of them violate this pledge, and the fact be satisfactorilyproved before the agent, the property taken shall be returned, or in default thereof, if injured or destroyed, compensation may be made by the government out of their annuities. Nor will they make war on any other tribe except in self-defence, but will submit all matters of difference between them and other Indians to the government of the United States, or its agent, for decision, and abide thereby. And if any of the said Indians commit any depredations on any other Indians within the Territory, the same rule shall prevail as that prescribed in this article, in cases of depredations against citizens. And the said tribes agree not to shelter or conceal offenders against the laws of the United States, but to deliver them up to the authorities for trial.

ARTICLE IX. The above tribes and bands are desirous to exclude from their reservations the use of ardent spirits, and to prevent their people from drinking the same; and, therefore, it is provided, that any Indian belong to said tribes, who is guity of bringing liquor into said reservations, or who drinks liquor, may have his or her proprotion of any annutities withheld from him or her for such time as the President may determine.

ARTICLE X. The United States further agree to establish at the general agency for the district of Puget's Sound, within one year from the ratification hereof, and support, for a period of twenty years, an agricultural and industrial school, to be free to children of the said tribes and bands, in common with those of the other tribes of said district, and to provide the said school with a suitable instructor or intstuctors, and also to provide a smithy and carpenter's shop, and furnish them with the necessary tools, and employ a blacksmith, carpenter and farmer, for the term of twenty years, to instruct the Indians in their respective occupations. And the United States further agree to employ a physician to reside at the said central agency, who shall furnish medicine and advice to their sick, and shall vaccinate them; the expenses of the said school, shops, employees, and medical attendance, to be defrayed by the United States, and not deducted from the annuities.

ARTICLE XI. The said tribes and bands agree to free all slaves now held by them, and not to purchase or acquire others hereafter.

ARTICLE XII. The said tribes and bands finally agree not to trade at Vancouver's Island, or elsewhere out of the dominions of the United States; nor shall foreign Indians be permitted to reside in their reservations without consent of the superintendent or agent.

ARTICLE XIII. This treaty shall be obligatory on the contracting parties as soon as the same shall be ratified by the President and Senate of the United States.

In testimony whereof, the said Isaac I. Stevens, governor and superintendent of Indian Affairs, and the undersigned chiefs, headmen, and delegates of the aforesaid tribes and bands, have hereunto set their hands and seals at the place and on the day and year hereinbefore written.

ISAAC I. STEVENS, [L.S.]

Governor and Superintendent Territory of Washington.

QUI-EE-METL,	his x mark, [L.S.]
SNO-HO-DUMSET,	his x mark, [L.S.]
LESH-HIGH,	his x mark, [L.S.]
SLIP-O-ELM,	his x mark, [L.S.]
KWI-ATS,	his x mark, [L.S.]
STEE-HIGH,	his x mark, [L.S.]
DI-A-KEH,	his x mark, [L.S.]
HI-TEN,	his x mark, [L.S.]
SQUA-TA-HUN,	his x mark, [L.S.]
KAHK-TSE-MIN,	his x mark, [L.S.]
SONAN-O-YUTL,	his x mark, [L.S.]
KL-TEHP,	his x mark, [L.S.]
SAHL-KI-MIN,	his x mark, [L.S.]
T'BET-STE-HEH-BIT,	his x mark, [L.S.]
TCHA-HOOS-TAN,	his x mark, [L.S.]
KE-CHA-HAT,	his x mark, [L.S.]
SPEE-PEH,	his x mark, [L.S.]
SWE-YAH-TUM,	his x mark, [L.S.]
CHAH-ACHSH,	his x mark, [L.S.]
PICH-KEHD,	his x mark, [L.S.]

S'KLAH-O-SUM,	his x mark, [L.S.]
SAH-LE-TATL,	his x mark, [L.S.]
SEE-LUP,	his x mark, [L.S.]
E-LA-KAH-KA,	his x mark, [L.S.]
SLUG-YEH,	his x mark, [L.S.]
HI-NUK,	his x mark, [L.S.]
MA-MO-NISH,	his x mark, [L.S.]
CHEELS,	his x mark, [L.S.]
KNUTCANU,	his x mark, [L.S.]
BATS-TA-KOBE,	his x mark, [L.S.]
WIN-NI-YA,	his x mark, [L.S.]
KLO-OUT,	his x mark, [L.S.]
SE-UCH-KA-NAM,	his x mark, [L.S.]
SKE-MAH-KAN,	his x mark, [L.S.]
WUTS-UN-A-PUM,	his x mark, [L.S.]
QUUTS-A-TADM,	his x mark, [L.S.]
QUUT-A-HEH-MTSN,	his x mark, [L.S.]
YAH-LEH-CHN,	his x mark, [L.S.]
TO-LAHL-KUT,	his x mark, [L.S.]
YUL-LOUT,	his x mark, [L.S.]
SEE-AHTS-OOT-SOOT,	his x mark, [L.S.]
YE-TAHKO,	his x mark, [L.S.]
WE-PO-IT-EE,	his x mark, [L.S.]
KAH-SLD,	his x mark, [L.S.]
LA'H-HOM-KAN,	his x mark, [L.S.]
PAH-HOW-AT-ISH,	his x mark, [L.S.]
SWE-YEHM,	his x mark, [L.S.]
SAH-HWILL,	his x mark, [L.S.]
SE-KWAHT,	his x mark, [L.S.]
KAH-HUM-KLT,	his x mark, [L.S.]
YAH-KWO-BAH,	his x mark, [L.S.]
WUT-SAH-LE-WUN,	his x mark, [L.S.]
SAH-BA-HAT,	his x mark, [L.S.]
TEL-E-KISH,	his x mark, [L.S.]
SWE-KEH-NAM,	his x mark, [L.S.]
SIT-OO-AH,	his x mark, [L.S.]
KO-QUEL-A-CUT,	his x mark, [L.S.]
JACK,	his x mark, [L.S.]
KEH-KISE-BE-LO,	his x mark, [L.S.]
GO-YEH-HN,	his x mark, [L.S.]
SAH-PUTSH,	his x mark, [L.S.]
WILLIAM,	his x mark, [L.S.]

Executed in the presence of us: —
M.T. SIMMONS,
Indian Agent.
JAMES DOTY,
Secretary of the Commission.
C.H. MASON,
Secretary Washington Territory.
W.A. SLAUGHTER,
1st Lieut. 4th Infantry.
JAMES McALISTER,
E. GIDDINGS, jr.,
GEORGE SHAZER,
HENRY D. COCK.
S.S. FORD, jr.,
HOHN W. McALISTER,
CLOVINGTON CUSHMAN,
PETER ANDERSON,
SAMUEL KLADY,
W.H. PULLEN,
P.O. HOUGH,
E.R. TYERALL,
GEORGE, GIBBS,
BENJ. F. SHAW, *Interpreter,*
HAZARD STEVENS.

And whereas the said treaty having been submitted to the Senate of the United States, for its constitutional action thereon, the Senate did, on the third day of March, one thousand eight hundred and fifty-five, advise and consent to the ratification of its articles by a resolution in the words and figures following, to wit: —

"IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES,
"*March* 3, 1855.

"*Resolved,* (two thirds of the senators present concurring,) That the Senate advise and consent to the ratification of the articles of agreement and convention made and concluded on the She-nah-nam, or Medicine Creek, in the Territory of Washington, this twenty-sixth day of December, in the year one thousand eight hundred and fifty-four, by Isaac I. Stevens, governor and superintendent of Indian affairs of the said Territory, on the part of the United States, and the undersigned chiefs, headmen, and delegates of the Nisqually, Puyallup, Steilacoom, Squawksin, S'Homamish, Steth-chass, T'Peeksin, Squi-aitl, and Saheh-wamish tribes and bands of Indians occupying the lands lying

round the head of Puget's Sound and the adjacent inlets, who, for the purpose of this treaty, are to be regarded as one nation, on behalf of said tribes and bands and duly authorized by them.

"Attest: ASBURY DICKINS,
"Secretary."

Now, therefore, be it known that I, FRANKLIN PIERCE, President of the United States of America, do, in pursuance of the advice and consent of the Senate, as expressed in their resolution of the third day of March, one thousand eight hundred and fifty-five, accept, ratify, and confirm the said treaty.

In testimony whereof, I have caused the seal of the United States to be hereto affixed, having signed the same with my hand.

[L.S.] Done at the city of Washington, this tenth day of April, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the United States the seventy-ninth.

FRANKLIN PIERCE.

By the President:
W.L. MARCY, *Secretary of State.*

APPENDIX D

TREATY WITH THE DWAMISH &c. INDIANS. JAN. 22, 1855

TREATIES

Treaty between the United States and the Dwamish, Suquamish, and other allied and subordinate Tribes of Indians in Washington Territory. Concluded at Point Elliott, Washington Territory, January 22, 1855. Ratified by the Senate, March 8, 1859. Proclaimed by the President of the United States, April 11, 1859.

JAMES BUCHMAN,
PRESIDENT OF THE UNITED STATES,

TO ALL AND SINGULAR TO WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS a treay was made and concluded at Muckl-te-oh, or Point Elliott, in the Territory of Washington, the twenty-second day of January, one thousand eight hundred and fifty-five, by Isaac I Stevens, governor and superintendent of Indian affairs for the said Territory, on the part of the United States , and the hereinafter-named chiefs, headmen, and delegates of the Dwamish, Suquamish, Sk-tahl-mish, Sam-ahmish, Smalh-kahmish, Skope-ahmish, St-kah-mish, Snoqualmoo, Skai-wha-mish, N'Quentl-ma-mish, Sk-tah-le-jum, Stoluck-whamish, Sno-ho-mish, Skagit, Kik-i-allus, Swin-a-mish, Squin-ah-mish, Sah-ku-mehu, Noo-wha-ha, Nook-wa-chah-mish, Mee-see-qua-guileh, Cho-bah-ah-bish, and other allied and subordinate tribes and bands of Indians occupying certain lands situated in said Territory of Washington, on behalf of said tribes and duly authorized by them; which treaty is in the words and figures following to wit:

Articles of agreement and convention made and concluded at Muckl-te-oh, or Point Elliott, in the Territory of Washington, this twenty-second day of January, eighteen hundred and fifty-five, by Isaac I. Stevens, governor and superintendent of Indian affairs for the said Territory, on the part of the United States, and the undersigned chiefs, headmen, and delegates of the Dwamish, Suquamish, Sk-tahl-mish, Sam-ahmish, Smalh-kahmish, Skope-ahmish, St-kah-mish, Snoqualmoo, Skai-wha-mish, N'Quentl-ma-mish, Sk-tah-le-jum, Stoluck-whamish, Sno-ho-mish, Skagit, Kik-i-allus, Swin-a-mish, Squin-ah-mish, Sah-ku-mehu, Noo-wha-ha, Nook-wa-chah-mish, Mee-see-qua-guileh, Cho-bah-ah-bish, and other allied and subordinate tribes

and bands of Indians occupying certain lands situated in said Territory of Washington, on behalf of said tribes and duly authorized by them.

ARTICLE I. The said tribes and bands of Indians hereby cede, relinquish, and convey to the United States all their right, title, and interest in and to the lands and country occupied by them, bounded and described as follows: Commencing at a point on the eastern side of Admiralty Inlet, known as Point Pully, about midway between Commencement and Elliott Bays; thence eastwardly, running along the north line of lands heretofore ceded to the United States by the Nisqually, Puyallup, and other Indians, to the summit of the Cascade range of mountains; thence northwardly, following the summit of said range to the 49th parallel of north latitude; thence west, along said parallel to the middle of the Gulf of Georgia; thence through the middle of said gulf and the main channel through the Canal de Arro to the Straits of Fuca, and crossing the same through the middle of Admiralty Inlet to the portage known as Wilkes' Portage; thence northeastwardly, and following the line of lands heretofore ceded as aforesaid to Point Southworth, on the western side of Admiralty Inlet, and thence round the foot of Vashon's Island eastwardly and southeastwardly to the place of beginning, including all the islands comprised within said boundaries, and all the right, title, and interest of the said tribes and bands to any lands within the territory of the United States.

ARTICLE II. There is, however, reserved for the present use and occupation of the said tribes and bands the following tracts of land, viz: the amount of two sections, or twelve hundred and eighty acres, surrounding the small bight at the head of Port Madison, called by the Indians Noo-slhk-um; the amount of two sections, or twelve hundred and eighty acres, on the north side Hwhomish Bay and the creek emptying into the same called Kwilt-seh-da, the peninsula at the southeastern end of Perry's Island call Shais-quihl, and the island call Chah-choo-sen, situated in the Lummi River at the point of separation of the mouths emptying respectively into Bellingham Bay and the Gulf of Georgia. All which tracts shall be set apart, and so far as necessary surveyed and marked out for their exclusive use; nor shall any white man be permitted to reside upon the same without permission of the said tribes or bands, and of the superintendent or agent, but, if necessary for the public convenience, roads may be run through the said reserves, the

Indians being compensated for any damage thereby done them.

ARTICLE III. There is also reserved from out the lands hereby ceded the amount of thirty-six sections, or one township of land, on the northeastern shore of Port Gardner, and north of the mouth of the Snohomish River, including Tulalip Bay and the before-mentioned Kwilt-seh-da Creek, for the purpose of establishing thereon an agricultural and industrial school, as hereinafter mentioned and agreed, and with a view of ultimately drawing thereto and settling thereon all the Indians living west of the Cascade Mountains in said Territory. Provided, however, that the President may establish the central agency and general reservation at such other point as he may deem for the benefit of the Indians.

ARTICLE IV. The said tribes and bands agree to remove to and settle upon the said first above mentioned reservations within one year after the ratification of this treaty, or sooner, if the means are furnished them. In the mean time it shall be lawful for them to reside upon any land not in the actual claim and occupation of citizens of the United States, and upon any land claimed or occupied, if with the permission of the owner.

ARTICLE V. The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands. Provided, however, that they shall not take shell-fish from any beds staked or cultivated by citizens.

ARTICLE VI. In consideration of the above cession, the United States agree to pay to the said tribes and bands the sum of one hundred and fifty thousand dollars, in the following manner — that is to say: For the first year after the ratification hereof, fifteen thousand dollars; for the next two years, twelve thousand dollars each year; for the next three years, ten thousand dollars each year; for the next four years, seven thousand five hundred dollars each year; for the next five years, six thousand dollars each year; and for the last five years, four thousand two hundred and fifty dollars each year. All which said sums of money shall be applied to the use and benefit of the said Indians under the direction of the President of the United States, who may from time to time determine at his discretion upon what beneficial objects to expend the same; and the Superintendent of Indian Affairs, or other proper officer.

shall each year inform the President of the wishes of said Indians in respect thereto.

ARTICLE VII. The President may hereafter, when in his opinion the interest of the Territory shall require and the welfare of the said Indians be promoted, remove them from either or all of the special reservations hereinbefore made to the said general reservation, or such other suitable place within said Territory as he may deem fit, on remunerating them for the improvements and the expenses of such removal, or may consolidate them with other friendly tribes or bands; and he may further at his discretion cause the whole or any portion of the lands hereby reserved, or of such other land as may be selected in lieu thereof, to be surveyed into lots, and assign the same to such individuals or families as are willing to avail themselves of the privilege, and will locate on the same as a permanent home on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable. Any substantial improvements heretofore made by any Indian, and which he shall be compelled to abandon in consequence of this treaty, shall be valued under the direction of the President and payment made accordingly therefor.

ARTICLE VIII. The annuities of the aforesaid tribe and bands shall not be taken to pay the debts of individuals.

ARTICLE IX. The said tribes and bands acknowledge their dependence on the government of the United States, and promise to be friendly with all citizens thereof, and they pledge themselves to commit no depredations on the property of such citizens. Should any one or more of them violate this pledge, and the fact be satisfactorily proven before the agent, the property taken shall be returned, or in default thereof, or if injured or destroyed, compensation may be made by the government out of their annuities. Nor will they make war on any other tribe except in self-defence, but will submit all matters of difference between them and the other Indians to the government of the United States or its agent for decision, and abide thereby. And if any of the said Indians commit depredations on other Indians within the Territory the same rule shall prevail as the prescribed in this article in cases of depredations against citizens. And the said tribes agree not to shelter or conceal offenders against the laws of the United States but to deliver them up to the authorities for trail.

ARTICLE X. The above tribes and bands are desirous to exclude from their reservations the use of ardent spirits, and to prevent their people from drinking the same, and therefore it is provided that any Indian belonging to said tribe who is guilty of bringing liquor into said reservations, or who drinks liquor, may have his or her proprotion of the annuities withheld from him or her for such time as the President may determine.

ARTICLE XI. The said tribes and bands agree to free all slaves now held by them and not to purchase or acquire others hereafter.

ARTICLE XII. The said tribes and bands further agree not to trade at Vancouver's Island or elsewhere out of the dominions of the United States, nor shall foreign Indians be permitted to reside in their reservations without consent of the superintendent or agent.

ARTICLE XIII. To enable the said Indians to remove to and settle upon their aforesaid reservations, and to clear, fence, and break up a sufficient quantity of land for cultivation, the United states further agree to pay the sum of fifteen thousand dollars to be laid out and expended under the direction of the President and in such manner as he shall approve.

ARTICLE XIV. The United States further agree to establish at the general agency for the district of Puget's Sound, within one year from the ratification hereof, and to support for a period of twenty years, an agricultural and industrial school, to be free to children of the said tribes and bands in common with those of the other tribes of said district, and to provide the said school with a suitable instructor or instructors, and also to provide a smithy and carpenter's shop, and furnish them with the necessary tools, and employ a blacksmith, carpenter, and farmer for the like term of twenty years to instruct the Indians in their respective occupations. And the United States finally agree to employ a physician to reside at the said central agency, who shall furnish medicine and advice to their sick and shall vaccinate them; the expenses of said school, shops, persons employed, and medical attendance to be defrayed by the United States, and not deducted from the annuities.

ARTICLE XV. This treaty shall be obligatory on the contracting parties as soon as the same shall be ratified by the President and Senate of the United States.

In testimony whereof, the said Isaac I. Stevens, governor and superintendent of Indian affairs, and the undersigned chiefs, headmen and delegates of the aforesaid tribes and bands of Indians, have hereunto set their hands and seals, at the place and on the day and year hereinbefore written.

ISAAC I. STEVENS, *Governor and Superintentend,* [L.S.]

SEATTLE, Chief of the Dwamish and Suquamish tribes.
his x mark, [L.S.]

PAT-KA-NAM, *Chief of the Snoqualmoo, Snohomish and other tribes*
his x mark, [L.S.]

CHOW-ITS-HOOT, *Chief of the Lummi and other tribes.*
his x mark, [L.S.]

GOLIAH, *Chief of the Skagits and other allied tribes.*
his x mark, [L.S.]

KWALLATTUM, or General Pierce, *Sub-chief of the Skagit tribe.*
his x mark, [L.S.]

S'HOOTST-HOOT, *Sub-chief of Snohomish.* his x mark, [L.S.]

SNAH-TALC, or Bonaparte, *Sub-chief of Snohomish.*
his x mark, [L.S.]

SQUUSH-UN, or The Smoke, *Sub-chief of the Snoqualmoo.*
his x mark, [L.S.]

SEE-ALLA-PA-HAN, or The Priest, *Sub-chief of Sk-tah-le-jum.*
his x mark, [L.S.]

HE-UCH-KA-NAM, or George Bonaparte, *Sub-chief of Snohomish.*
his x mark, [L.S.]

TSE-NAH-TALC, or Joseph Bonaparte, *Sub-chief of Snohomish.*
his x mark, [L.S.]

NS'SKI-OOS, or Jackson, *Sub-chief of Snohomish.*
his x mark, [L.S.]

WATS-KA-LAH-TCHIE, or John Hobtst-hoot, *Sub-chief of Snohomish.* his x mark, [L.S.]

SMEH-MAI-HU, *Sub-chief of Skai-wha-mish* his x mark, [L.S.]

SLAT-EAH-KA-NAM, *Sub-chief of Snoqualmoo.* his x mark, [L.S.]

ST'HAU-AI, *Sub-chief of Snoqualmoo.* his x mark, [L.S.]

LUGS-KEN, *Sub-chief of Skai-wha-mish.* his x mark, [L.S.]

S'HEHT-SOOLT, or Peter, *Sub-chief of Snohomish.*
his x mark, [L.S.]

DO-QUEH-OO-SATL, *Snooqualmoo tribe.* his x mark, [L.S.]
JOHN KANAM, *Snoqualmoo sub-chief.* his x mark, [L.S.]
KLEMSH-KA-NAM, *Snoqualmoo.* his x mark, [L.S.]
TS'HUAHNTL, *Dwa-mish sub-chief.* his x mark, [L.S.]
KWUSS-KA-NAM, or George Snatelum, Sen., *Skagit tribe.* his x mark, [L.S.]
HEL-MITS, or George Snatelum, *Skagit sub-chief.* his x mark, [L.S.]
S'KWAI-KWI, *Skagit trib, sub-chief.* his x mark, [L.S.]
SHE-LEK-QU, *Sub-chief Lummi tribe.* his x mark, [L.S.]
S'H'-CHEH-OOS, or General Washington, *Sub-chief of Lummi tribe.* his x mark, [L.S.]
WHAI-LAN-HU, or Davy Crockett, *Sub-chief of Lummi tribe.* his x mark, [L.S.]
SHE-AH-DELT-HU, *Sub-chief of Lummi tribe.* his x mark, [L.S.]
KWULT-SEH, *Sub-chief of Lummi tribe.* his x mark, [L.S.]
KWULL-ET-HU, *Lummi tribe.* his x mark, [L.S.]
KLEH-KENT-SOOT, *Skagit tribe.* his x mark, [L.S.]
SOHN-HEH-OVS, *Skagit tribe.* his x mark, [L.S.]
S'DEH-AP-KAN, or General Warren, *Skagit tribe.* his x mark, [L.S.]
CHUL-WHIL-TAN, *Sub-chief of Suquamish tribe.* his x mark, [L.S.]
SHE-EH-TUM, *Skagit tribe.* his x mark, [L.S.]
PATCHKANAM, or Dome, *Skagit tribe.* his x mark, [L.S.]
SATS-KANAM, *Squin-ah-nush tribe.* his x mark, [L.S.]
SD-ZO-MAHTL, *Kik-ial-lus band.* his x mark, [L.S.]
DAHTL-DE-MIN, *Sub-chief of Sah-ku-meh-hu.* his x mark, [L.S.]
SD'ZEK-DU-NUM, *Me-sek-wi-guilse sub-chief.* his x mark, [L.S.]
NOW-A-CHAIS, *Sub-chief of Dwamish.* his x mark, [L.S.]
MIS-LO-TCHE, or Wah-hehl-tchoo, *Sub-chief of Suquamish.* his x mark, [L.S.]
SLOO-NOKSH-TAN, or Jim, *Suquamish tribe.* his x mark, [L.S.]
MOO-WHAH-LAD-HU, or Jack, *Suquamish tribe.* his x mark, [L.S.]
TOO-LEH-PLAN, *Suquamish tribe.* his x mark, [L.S.]
HA-SEH-DOO-AN, or Keo-kuck, *Dwamish tribe.* his x mark, [L.S.]
HOOVILT-MEH-TUM, *Sub-chief of Suquamish.* his x mark, [L.S.]
WE-AI-PAH, *Skaiwhamish tribe.* his x mark, [L.S.]
S'AH-AN-HU, or Hallam, *Snohomish tribe.* his x mark, [L.S.]
SHE-HOPE, or General Pierce, *Skagit tribe.* his x mark, [L.S.]

HWN-LAH-LAKQ, or Thomas Jefferson, *Lummi tribe.*
his x mark, [L.S.]

CHT-SIMPT, *Lummi tribe.* his x mark, [L.S.]
TSE-SUM-TEN, *Lummi tribe.* his x mark, [L.S.]
KLT-HAHL-TEN, *Lummi tribe.* his x mark, [L.S.]
KUT-TA-KANAM, or John, *Lummi tribe.* his x mark, [L.S.]
CH-LAH-BEN, *Noo-qua-cha-mish band.* his x mark, [L.S.]
NOO-HEH-OOS, *Snoqualmoo tribe.* his x mark, [L.S.]
HWEH-UK, *Snoqualmoo tribe.* his x mark, [L.S.]
PEH-NUS, *Skai-whamish tribe.* his x mark, [L.S.]
YIM-KA-NAM, *Snoqualmoo tribe.* his x mark, [L.S.]
TWOOI-AS-KUT, *Skaiwhamish tribe.* his x mark, [L.S.]
LUCH-AL-KANAM, *Snoqualmoo tribe.* his x mark, [L.S.]
S'HOOT-KANAM, *Snoqualmoo tribe.* his x mark, [L.S.]
SME-A-KANAM, *Snoqualmoo tribe.* his x mark, [L.S.]
SAD-ZIS-KEH, *Snoqualmoo.* his x mark, [L.S.]
HEH-MAHL, *Skaiwhamish band.* his x mark, [L.S.]
CHARLEY, *Skagit tribe.* his x mark, [L.S.]
SAMPSON, *Skagit tribe.* his x mark, [L.S.]
JOHN TAYLOR, *Snohomish tribe.* his x mark, [L.S.]
HATCH-KWENTUM, *Skagit tribe.* his x mark, [L.S.]
YO-I-KUM, *Skagit tribe.* his x mark, [L.S.]
T'KWA-MA-HAN, *Skagit tribe.* his x mark, [L.S.]
STO-DUM-KAN, *Swinamish band.* his x mark, [L.S.]
BE-LOLE, *Swinamish band.* his x mark, [L.S.]
D'ZO-LOLE-GWAH-HU, *Skagit tribe.* his x mark, [L.S.]
STEH-SHAIL, William, *Skaiwhamish band.* his x mark, [L.S.]
KEL-KAHL-TSOOT, *Swinamish tribe.* his x mark, [L.S.]
PAT-SEN, *Skagit tribe.* his x mark, [L.S.]
PAT-TEH-US, *Noo-wha-ah sub-chief.* his x mark, [L.S.]
S'HOOLK-KA-NAM, *Lummi sub-chief.* his x mark, [L.S.]
CH-LOK-SUTS, *Lummi sub-chief.* his x mark, [L.S.]

Executed in the presence of us —

M.T. SIMMONS, *Indian agent.*
C.H. MASON, *Secretary of Washington Territory.*
BENJ. F. SHAW, *Interpreter.*
CHAS. M. HITCHCOCK.
H.A. GOLDBOROUGH.
GEROGE GIBBS.
JOHN H. SCRANTON.
HENRY D. COCK.
S.S. FORD, Jr.
ORRINGTON CUSHMAN.
ELLIS BARNES.
R.S. BAILEY.
S.M. COLLINS.
LAFAYETEE BALCH.
E.S. FOWLER.
J.H. HALL.
ROB'T DAVIS.

And whereas, the said treaty having been submitted to the Senate of the United States for its constitutional action thereon, the Senate did, on the eighth day of March, one thousand eight hundred and fifty-nine, advise and consent to the ratification of its articles by a resolution in the words and figures following, to wit:

"IN EXECUTIVE SESSION,
"SENATE OF THE UNITED STATES, MARCH 8, 1859.

"Resolved, (two-thirds of the senators present concurring.) That the Senate advise and consent to the ratification of treaty between the United States and the chiefs, headmen and delegates of the Dwamish, Suquamish and other allied and subordinate tribes of Indians occupying certain lands situated in Washington Territory, signed the 22d day of January, 1855.

"Attest: "ASBURY DICKINS, *Secretary"*

Now, therefore, be it known that I, JAMES BUCHANAN, President of the United States of America, do, in pursuance of the advice and consent of the Senate, as expressed in their resolution of the eighth of March, one thousand eight hundred and fifty-nine, accept, ratify, and confirm the said treaty.

In testimony whereof, I have caused the seal of the United States to be hereto affixed, and have signed the same with my hand.

Done at the city of Washington, this eleventh day of April,
[SEAL.] in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the United States the eighty-third.

JAMES BUCHANAN.

By the President:
LEWIS CASS, *Secretary of State.*

APPENDIX E

Muckleshoot Reserve.

[In Tulalip Agency, area 3 square miles.]

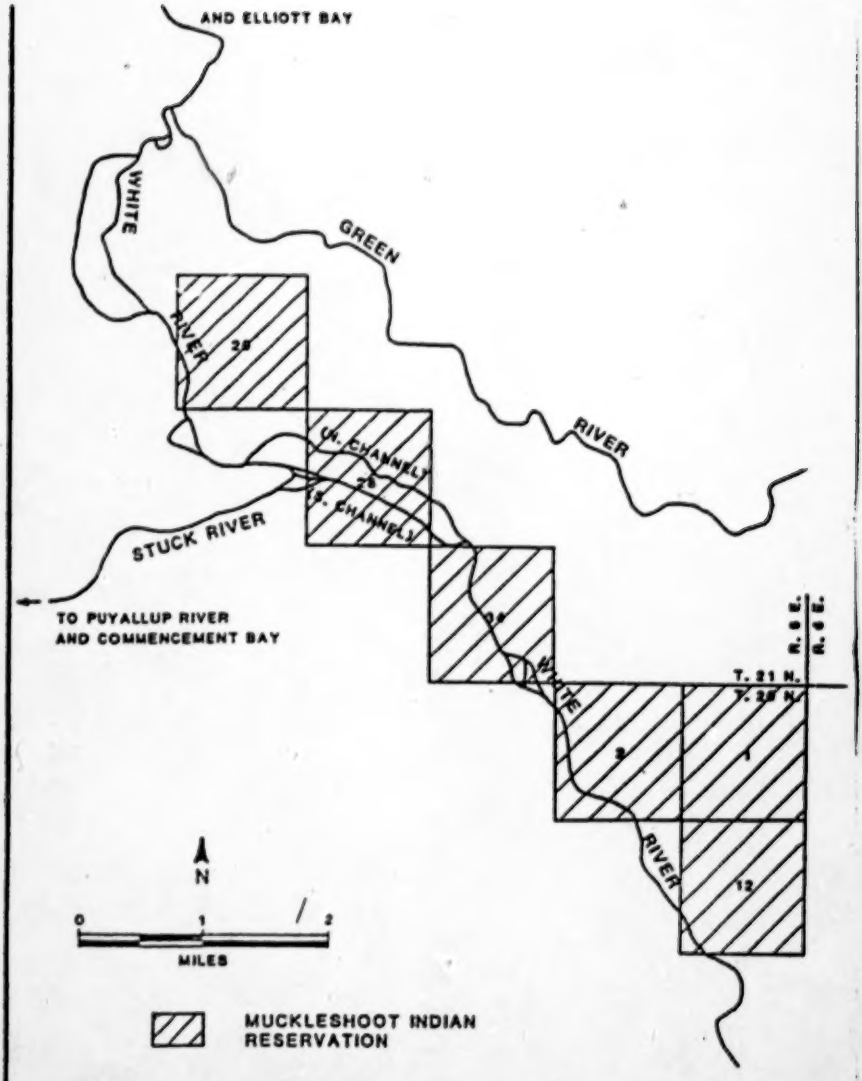
(for Executive orders of January 19 and 20, 1857, relative to Muckleshoot Reserve, see "Nisqually Reserve." below.)

EXECUTIVE MANSION, *April 9, 1874.*

It is hereby ordered that the following tracts of land in Washington Territory, viz: Sections 2 and 12 of township 20 north, range 5 east, and sections 20, 28 and 34, of township 21 north, range 5 east, Willamette meridian, be withdrawn from sale or other disposition, and set apart as the Muckleshoot Indian Reservation, for the exclusive use of the Indians in that locality, the same being supplemental to the action of the Department approved by the President January 20, 1857.

U.S. GRANT

APPENDIX F



STETSON ENGINEERS INC. CIVIL AND CONSULTING ENGINEERS	RIVER POSITIONS IN VICINITY OF MUCKLESHOOT INDIAN RESERVATIO' A-3 1974